



भारत का राजपत्र

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No. 9]

NEW DELHI, FEBRUARY 26—MARCH 3, 2012, SATURDAY/PHALGUNA 7—PHALGUNA 13, 1933

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 21 फरवरी, 2012

का.आ. 798.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम संख्या 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए परीक्षण न्यायालयों तथा विधि द्वारा स्थापित पुनरीक्षण या अपीलीय न्यायालयों में अपीलों, पुनरीक्षणों या इन मामलों से उत्पन्न अन्य मामले जो कि दिल्ली विशेष पुलिस स्थापना (के.अ.ब्यूरो) द्वारा स्थापित किए गए हैं, स्थानीय क्षेत्र जिसमें सारा असम राज्य सम्मिलित है, में अभियोजन मामलों की संचालन करने के लिए निम्नोक्त वकीलों को के.अ.ब्यूरो के लोक अभियोजक के रूप में नियुक्त करती है :—

1. श्री अभिजीत भट्टाचार्य
2. श्री सुप्रतिय देब पुरकायस्थ

[फा. सं. 202/5/2011-एवीडी-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 21st February, 2012

S.O. 798.—In exercise of the powers conferred by sub-section (2) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following Advocates in Central Bureau of Investigation as Public Prosecutor for conducting the prosecution of cases in the State of Assam instituted by the Delhi Special Police Establishment (CBI) in trial courts and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts, established by law :—

- (1) Shri Abhijit Bhattacharya
- (2) Shri Supratim Deb Purkayastha

[F. No. 202/5/2011-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 24 फरवरी, 2012

का.आ. 799.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया सहिता, 1973 (1974 का अधिनियम संख्या 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के सर्वोच्च न्यायालय में निमोक्त मामलों के संबंध में के.अ.ब्यूरो की ओर से उनका संचालन करने के लिए श्री गोपाल सुब्रहमण्यम, वकील को विशेष लोक अभियोजक के रूप में नियुक्त करती है :—

- (i) भूतपूर्व एस.एल.पी. (क्रिमनल) सं. सी.सी. 4085/2011 (के.अ.ब्यूरो बनाम बाला साहेब ठाकरे और अन्य) अब एस.एल.पी. (क्रिमनल) सं. 2275/2011
- (ii) एस.एल.पी. (क्रिमनल) सं. 2981/2011 (राजेश तलवार बनाम के.अ.ब्यूरो और अन्य)
- (iii) अपराध अपील सं. 1179/2007 (रुबिना सुलेमान मेनन बनाम महाराष्ट्र राज्य (के.अ.ब्यूरो))
- (iv) डब्ल्यू पी.सी. सं./2011 (सी.पी.आई.ओ. और ए.आई.जी. (पी) बनाम धर्मबीर खट्टर)
- (v) एस.एल.पी. (क्रिमनल) सं. 7266/2007 (के.अ.ब्यूरो बनाम अशोक कुमार अग्रवाल) तथा अन्य सम्बद्ध मामले
- (vi) 1993 के बाब्बे बम ब्लास्ट मामले तथा सम्बद्ध मामले।
- (vii) बोफोर्स मामले में एस.एल.पी. मामले तथा अपील, पुनरीक्षण या इससे सम्बद्ध अन्य मामले तथा इनसे प्रासंगिक मामले।

[फा. सं. 225/37/2011-एवीडी-II]
राजीव जैन, अवर सचिव

New Delhi, the 24th February, 2012

S.O. 799.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Gopal Subramanium, Advocate as Special Public Prosecutor for his appearance on behalf of CBI in the following matters in the Supreme Court of India :—

- (i) Formerly SLP (Crl.) No. CC4085/2011 (CBI Vs. Bala Saheb Thackerey & others) now SLP (Crl.) No. 2275/2011
- (ii) SLP (Crl.) No. 2981/2011 (Rajesh Talwar Vs. CBI & others)
- (iii) Crl. Appeal No. 1179/2007 (Rubina Suleman Memon Vs. State of Maharashtra (CBI)).

- (iv) W.P. (C) No./2011 (CPIO & AIG(P) Vs. Dharambir Kahttar)
- (v) SLP (Crl.) No. 7266/2007 (CBI Vs. Ashok Kumar Aggarwal) and other connected matter.
- (vi) Bombay Bomb Blast cases of 1993 and related matters.
- (vii) SLP Matters in Bofors Case.

and appeals, revisions or other matters connected therewith and incidental thereto.

[F. No. 225/37/2011-AVD-II]

RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 फरवरी, 2012

का.आ. 800.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 6 की उप-धारा (1) के खण्ड (ण) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, “स्वचालित टेलर मशीनों पर भारतीय रिजर्व बैंक, भारतीय प्रतिभूति विनियम बोर्ड, बीमा विनियामक विकास प्राधिकरण और पेंशन निधि विनियामक और विकास प्राधिकरण द्वारा तय की गई विनियामक संरचना के अनुरूप वित्तीय उत्पादों के प्रदर्शन” व्यवसाय के ऐसे रूप में विनिर्दिष्ट करती है जिसके अंतर्गत एक बैंककारी कंपनी के लिए इनका प्रयोग करना विधिसम्मत है।

[फा. सं. 11/16/2011-एफआई (पार्ट)]

अरुण के. मिश्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th February, 2012

S.O. 800.—In exercise of the powers conferred by clause (o) of sub-section (1) of Section 6 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government hereby specifies “display of financial products conforming to the regulatory framework as provided by RBI, SEBI, IRDA and PFRDA, on the Automated Teller Machines” as a form of business in which it is lawful for a banking company to engage.

[F. No. 11/16/2011-FI (Part)]

ARUN K. MISRA, Under Secy.

(राजस्व विभाग)
 (केन्द्रीय प्रत्यक्ष कर बोर्ड)
 नई दिल्ली, 17 फरवरी, 2012
आयकर

का. आ. 801.—आयकर अधिनियम, 1961(1961 का 43) की धारा 139 की उप-धारा (1 ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्द्वारा इसके उपरांत विनिर्दिष्ट शर्तों के अधीन निम्नलिखित श्रेणी के व्यक्तियों को कर निर्धारण वर्ष 2012-13 के लिए धारा 139 की उप-धारा (1) के अन्तर्गत आय विवरणी दाखिल करने की आवश्यकता से छूट देती है, अर्थात् :—

1. व्यक्तियों की श्रेणी—ऐसा व्यष्टि जिसकी संगत कर निर्धारण वर्ष के लिए कुल आय पांच लाख रुपये से अधिक नहीं है तथा केवल निम्नलिखित शीर्ष के अन्तर्गत आयकर प्रभार्य है।

(क) “वेतन”;

(ख) बैंक में बचत खाते से ब्याज के रूप में—“अन्य स्रोतों से आय” जो दस हजार रुपए से अधिक नहीं है।

2. शर्त,—पैरा 1 में उल्लिखित व्यष्टि,—

(i) अपनी स्थाई खाता संख्या (पैन) में अपने नियोक्ता की सूचना दी है;

(ii) अपने नियोक्ता को पैरा 1 के उपपैरा (ख) में उल्लिखित आय की सूचना दी है तथा नियोक्ता ने उस पर कर काटा है;

(iii) अपने नियोक्ता से फार्म 16 में कर कटौती का प्रमाणपत्र प्राप्त किया है जो पैन, आय के ब्लौरे तथा स्रोत पर काटे गए एवं केन्द्र सरकार के क्रेडिट में जमा किए गए कर का उल्लेख करता है;

(iv) स्रोत पर कर कटौती तथा नियोक्ता द्वारा केन्द्र सरकार को उसके जमा के माध्यम से कर निर्धारण वर्ष के लिए अपनी कुल कर देयता का निर्वाह किया है;

(v) कर निर्धारण वर्ष की आय के लिए उस पर देय कर के प्रतिदाय का कोई दावा नहीं है; और

(vi) कर निर्धारण वर्ष के लिए केवल एक नियोक्ता से वेतन प्राप्त किया है।

3. आयकर विवरणी प्रस्तुत करने की आवश्यकता से छूट वहां प्राप्त नहीं की जाएगी जहां आयकर अधिनियम की धारा 142 (1) या धारा 148 या 153क या धारा 153ग के अन्तर्गत संगत कर निर्धारण वर्ष के लिए आय विवरणी दाखिल करने के लिए नोटिस जारी किया गया है।

4. यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रभावी होगी।

[अधिसूचना सं. 09/2012/फा. सं. 225/283/2011-आ.क.नि.-II]

अजय गोयल, निदेशक (आ.क.नि.-II)

(Department of Revenue)
 (CENTRAL BOARD OF DIRECT TAXES)
 New Delhi, the 17th February, 2012
(Income-tax)

S.O. 801.—In exercise of the power conferred by sub-section (1C) of section 139 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby exempts the following class of persons, subject to the conditions specified hereinafter, from the requirement of furnishing a return of income under sub-section (1) of section 139 for the assessment year 2012-13, namely :—

1. **Class of persons.**—An Individual whose total income for the relevant assessment year does not exceed five lakh rupees and consists of only income chargeable to income-tax under the following head,—

- (A) “Salaries”;
- (B) “Income from other sources”, by way of interest from a saving account in a bank, not exceeding ten thousand rupees.

2. **Conditions.**—The individual referred to in para 1,—

- (i) has reported to his employer his permanent Account Number (PAN);
- (ii) has reported to his employer, the incomes mentioned in sub-para (B) of para I and the employer has deducted the tax thereon;
- (iii) has received a certificate of tax deduction in Form 16 from his employer which mentions the PAN, details of income and the tax deducted at source and deposited to the credit of the Central Government;
- (iv) has discharged his total tax liability for the assessment year through tax deduction at source and its deposit by the employer to the Central Government;
- (v) has no claim of refund of taxes due to him for the income of the assessment year, and
- (vi) has received salary from only one employer for the assessment year.

3. The exemption from the requirement of furnishing a return of income tax shall not be available where a notice under section 142 (1) or section 148 or section 153 A or section 153C of the Income-tax Act has been issued for filing a return of income for the relevant assessment year.

4. This notification shall come into force from the date its publication in the Official Gazette.

[Notification No. 09/2012/F. No. 225/283/2011-ITA-II]

AJAY GOYAL, Director (ITA-II)

नई दिल्ली, 21 फरवरी, 2012

(आयकर)

का.आ. 802.—जबकि केन्द्र सरकार ने आयकर अधिनियम, 1961 (1961 का 43) (जिसे इसमें इसके पश्चात उक्त अधिनियम के रूप में संवर्धित किया गया) की धारा 80ज्ञक की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 1 अप्रैल, 1997 को आरंभ हो रही तथा 31 मार्च, 2002 को समाप्त हो रही अवधि के लिए संख्या का.आ. 193 (अ), दिनांक 30 मार्च, 1999 द्वारा तथा 01 अप्रैल, 1997 को आरंभ हो रही तथा 31 मार्च, 2006 को समाप्त हो रही अवधि के लिए संख्या का.आ. 354 (अ), दिनांक 01 अप्रैल, 2002 द्वारा वाणिज्य एवं उद्योग मंत्रालय (औद्योगिक नीति एवं संवर्धन मंत्रालय) में भारत सरकार की अधिसूचनाओं द्वारा औद्योगिक पार्क के लिए एक योजना निर्मित एवं अधिसूचित की है ;

और जबकि मैसर्स प्रसाद टेक्नॉलॉजी पार्क प्राइवेट लिमिटेड, जिसका पंजीकृत पता 2/10, तृतीय तल, 80 फीट सड़क, पुजारी लेआउट, आर एम वी, द्वितीय चरण, बंगलुरु-560094 में है, प्लॉट सं. 97, ईपीआईपी औद्योगिक क्षेत्र, व्हाइटफील्ड, बंगलुरु, कर्नाटक-560066 में एक औद्योगिक पार्क विकसित कर रहा है ।

और जबकि केन्द्र सरकार ने उक्त औद्योगिक पार्क का अनुमोदन, वाणिज्य एवं उद्योग मंत्रालय के दिनांक 13-04-2006 के पत्र सं. 15/62/2005 आईडी-II द्वारा उसमें उल्लिखित निबंधन एवं शर्तों के अधीन किया है;

अतः अब उक्त अधिनियम की धारा 80ज्ञक की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतदद्वारा इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन मैसर्स प्रसाद टेक्नॉलॉजी पार्क प्रा. लि., बंगलुरु द्वारा विकसित एवं अनुरक्षित तथा प्रचालित किए जा रहे उपक्रम को उक्त खंड (iii) के प्रयोजनार्थ एक औद्योगिक पार्क के रूप में अधिसूचित करती है ।

अनुबंध

शर्तें जिन पर मैसर्स प्रसाद टेक्नॉलॉजी पार्क प्रा. लि., बंगलुरु द्वारा एक औद्योगिक पार्क की स्थापना के लिए भारत सरकार का अनुमोदन प्रदान किया गया है ।

1.

(i)	औद्योगिक उपक्रम का नाम	प्रसाद टेक्नॉलॉजी पार्क प्रा. लिमिटेड,
(ii)	अवस्थान	प्लॉट सं. 97, ईपीआईपी, औद्योगिक क्षेत्र, व्हाइटफील्ड, बंगलुरु, कर्नाटक-560066
(iii)	निर्मित न्यूनतम फर्शी क्षेत्र	10711 वर्ग मीटर
(iv)	प्रस्तावित औद्योगिक कार्य-कलाप	

एन आई सी कोड के साथ औद्योगिक क्रियाकलाप की प्रकृति

एन आई सी कोड			विवरण	
क्रम सं.	धारा	प्रभाग	समूह	श्रेणी
क	3	36	-	विद्युतीय औद्योगिक मशीनरी, अपैरेटस और उसके पार्ट्स का विनिर्माण
ख	8	89	892	- डाटा प्रसंस्करण, सॉफ्टवेयर विकास एवं कम्प्यूटर परामर्शी सेवाएं
ग	8	89	893	- कारोबार एवं प्रबंधन परामर्शी क्रियाकलाप
घ	8	89	894	- आर्किटेक्चरल एवं अभियांत्रिकी एवं अन्य तकनीकी परामर्शी सेवाएं
ड	8	89	895	- तकनीकी परीक्षण एवं विश्लेषण सेवाएं
(v)	औद्योगिक उपयोग के लिए उद्दिष्ट आबंटन योग्य क्षेत्रफल की प्रतिशतता	95.00	प्रतिशत	
(vi)	वाणिज्यिक उपयोग के लिए उद्दिष्ट आबंटन योग्य क्षेत्रफल की प्रतिशतता	5.00	प्रतिशत	
(vii)	औद्योगिक उपक्रमों की न्यूनतम संख्या	03	यूनिटें	

(viii)	प्रस्तावित कुल निवेश (राशि रूपए में)	10,52,24,434
(ix)	औद्योगिक प्रयोग के लिए निर्मित स्थान पर निवेश (राशि रूपए में)	8,26,67,565
(x)	औद्योगिक प्रयोग के लिए निर्मित स्थान पर निवेश समेत अवसंरचना विकास पर निवेश (राशि रूपए में)	10,52,24,434
(xi)	औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि	30-11-2005

2. आवश्यक अनुमोदन जिसमें निवेश संवर्धन बोर्ड या भारतीय रिजर्व बैंक या उस समय लागू किसी कानून के अन्तर्गत विनिर्दिष्ट किसी प्रधिकारी द्वारा विदेशी प्रत्यक्ष निवेश या अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल है, लागू नीति एवं कार्य प्रणाली के अनुसार अलग से लिया जाएगा।

3. अधिनियम के अन्तर्गत कर लाभ इस अधिसूचना के पैरा 1 (vii) में उल्लिखित संख्या में यूनिटों के औद्योगिक पार्क में स्थित हो जाने के बाद ही प्राप्त किया जा सकता है।

4. मैसर्स प्रसाद टेक्नॉलॉजी पार्क प्रा.लि., बंगलुरु उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिसमें आयकर अधिनियम, 1961 की धारा 80ज्ञक की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ प्राप्त किया जाना है।

5. यदि औद्योगिक पार्क 31-3-2006 तक शुरू नहीं हुआ, तो आयकर अधिनियम, 1961 की धारा 80ज्ञक की उप-धारा (4)(iii) के अन्तर्गत लाभ प्राप्त करने के लिए उस योजना के अन्तर्गत प्रयोज्यता के अधीन औद्योगिक पार्क योजना, 2008 के अन्तर्गत नया आवेदन अपेक्षित होगा।

6. अनुमोदन अमान्य हो जाएगा तथा मैसर्स प्रसाद टेक्नॉलॉजी पार्क प्रा.लि., बंगलुरु ऐसी अमान्यता की किसी प्रतिक्रिया के लिए पूरी तरह जिम्मेदार होगा, यदि

- (i) जिस आवेदन के आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया जाता है उसमें गलत सूचना/मिथ्या जानकारी होती है अथवा कोई वस्तुगत सूचना प्रदान नहीं की जाती है।
- (ii) यह औद्योगिक पार्क के अवस्थान के लिए है जिसके लिए किसी अन्य उपक्रम के नाम में अनुमोदन पहले ही प्रदान किया जा चुका है।

7. यदि मैसर्स प्रसाद टेक्नॉलॉजी पार्क प्रा.लि., बंगलुरु किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को औद्योगिक पार्क (अर्थात् अंतरणकर्ता उपक्रम) का प्रचालन एवं अनुरक्षण हस्तांतरित कर देगा, तो अंतरणकर्ता एवं अंतरिती संयुक्त रूप से उपर्युक्त अंतरण के लिए अंतरणकर्ता एवं अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति एवं संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यम सहायता यूनिट को सूचित करेंगे।

8. इस अधिसूचना में उल्लिखित शर्तों तथा औद्योगिक पार्क स्कीम, 2002 में शामिल की गई शर्तों का उस अवधि के दौरान पालन किया जाना चाहिए जिसके लिए इस स्कीम के अन्तर्गत लाभ उठाए जाने हैं। केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है, यदि मैसर्स प्रसाद टेक्नॉलॉजी पार्क प्रा.लि., बंगलुरु किन्हीं भी शर्तों का पालन करने में असमर्थ होता है।

9. केन्द्र सरकार के अनुमोदन के बिना परियोजना प्लान में किसी संशोधन अथवा भविष्य में अभिज्ञान अथवा आवेदक द्वारा किसी वस्तुगत तथ्य को प्रकट न करने से औद्योगिक पार्क का अनुमोदन अमान्य हो जाएगा।

[अधिसूचना सं. 10/2012/फा.सं. 178/7/2011-आ.क.नि.-I]

रमण चोपड़ा, निदेशक (आ.क.नि.-I)

New Delhi, the 21st February, 2012

(INCOME-TAX)

S.O. 802.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E), dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Prasad Technology Park Private Limited having its registered office at #2/10, 3rd Floor, 80 Feet Road, Poojari Layout, RMV, 2nd Stage, Bangalore-560094, is developing an Industrial Park at Plot No. 97, E.P.I.P. Industrial Area, Whitefield, Bangalore, Karnataka-560 066;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/62/2005-ID-II dated 13-04-2006 subject to the terms and conditions mentioned therein;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Prasad Technology Park Pvt. Ltd., Bangalore, as an industrial park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure to this notification.

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Prasad Technology Park Pvt. Ltd., Bangalore.

1 . (i)	Name of the Industrial Undertaking	:	Prasad Technology Park Private Limited
(ii)	Proposed location	:	Plot No. 97, E.P.I.P. Industrial Area, Whitefield, Bangalore, Karnataka-560 066
(iii)	Area of Industrial Park	:	10711 Square Meters
(iv)	Proposed activities		

Nature of Industrial activity with NIC code

S. No.	Section	NIC Code			Description
		Division	Group	Class	
A	3	36	-	-	Manufacture of electrical industrial machinery, apparatus and parts thereof
B	8	89	892	-	Data processing, software development and computer consultancy services
C	8	89	893	-	Business and management consultancy activities
D	8	89	894	-	Architectural and engineering and other technical consultancy activities
E	8	89	895	-	Technical testing and analysis services

(v)	percentage of allocable area earmarked for Industrial use	:	95.00%
(vi)	Percentage of allocable area earmarked for commercial use	:	5.00%
(vii)	Minimum number of industrial units	:	03 Units
(viii)	Total investments proposed (Amount in Rupees)	:	Rs.10,52,24,434
(ix)	Investment on built up space for Industrial use (Amount in Rupees)	:	Rs. 8,26,67,565
(x)	Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees)	:	Rs.10,52,24,434
(xi)	Proposed date of commencement of the Industrial Park	:	30-11-2005

2. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.
3. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.
4. M/s. Prasad Technology Park Pvt. Ltd., Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80 IA of the Income-tax Act, 1961 are to be availed.
5. In case the Industrial Park did not commence by 31-3-2006, fresh approval will be required under the Industrial Park Scheme, 2008 subject to the applicability under that Scheme for availing benefits under sub-section 4(iii) of Section 80 IA of the Income tax Act, 1961.
6. The approval will be invalid and M/s. Prasad Technology Park Pvt. Ltd., Bangalore shall be solely responsible for any repercussions of such invalidity, if
 - (i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.
 - (ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.
7. In case M/s. Prasad Technology Park Pvt. Ltd., Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.
8. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Prasad Technology Park Pvt. Ltd., Bangalore, fails to comply with any of the conditions.
9. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 10/12012/F.N. 178/7/2011-ITA-I]

RAMAN CHOPRA, Director (ITA-I)

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 16 नवम्बर, 2011

का.आ. 803.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, भारतीय चिकित्सा परिषद् से परामर्श कर के सम्बद्ध विश्वविद्यालय के नाम में परिवर्तन के कारण उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, नामतः :—

(क) “संतोष विश्वविद्यालय, गाजियाबाद” के समक्ष “मान्यताप्राप्त चिकित्सा अर्हता” [इसके बाद कॉलम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत और “पंजीकरण के लिए संक्षेपण” [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :—

“मास्टर ऑफ सर्जरी” (प्रसूति एवं स्त्री रोग विशेषज्ञ)

एमएस (ओबीजी)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

“डाक्टर ऑफ मेडिसिन” (क्षय रोग व श्वसनीय रोग /प्लमोनरी मेडिसिन) एमडी (टीबी व श्वसनीय रोग /प्लमोनरी मेडिसिन)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

“क्षय रोग व छाती रोग में डिप्लोमा”

डीटीसीडी

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

“डाक्टर ऑफ मेडिसिन” (फिजियोलॉजी)

एमडी (फिजियोलॉजी)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

“डाक्टर ऑफ मेडिसिन” (बायोकेमिस्ट्री)

एमडी (बायोकेमिस्ट्री)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

“डाक्टर ऑफ मेडिसिन” (माइक्रोबायोलॉजी)

एमडी (माइक्रोबायोलॉजी)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

“डाक्टर ऑफ मेडिसिन” (मनोरोग विज्ञान)

एमडी (मनोरोग विज्ञान)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

“मनोरोग चिकित्सा में डिप्लोमा”

डीपीएम

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)

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“डाक्टर ऑफ मेडिसिन (कम्यूनिटी मेडिसिन) ”	एमडी (कम्यूनिटी मेडिसिन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह संतोष मेडिकल कॉलेज, गाजियाबाद, में प्रशिक्षित विद्यार्थियों के बारे में संतोष विश्वविद्यालय, गाजियाबाद द्वारा मई, 2011 में अथवा बाद में प्रदान की गई हो।)
(ख) “बुंदेलखण्ड विश्वविद्यालय, झासी उत्तर प्रदेश” के समक्ष “मान्यता प्राप्त चिकित्सा अर्हता” [इसके बाद कॉलम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत और “पंजीकरण के लिए संक्षेपण” [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :—	
2	3
“मास्टर ऑफ सर्जरी” (प्रसूति एवं स्त्री रोग विज्ञान)	एमएस (ओबीजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह एमएलबी मेडिकल कॉलेज, झांसी, उत्तर प्रदेश, में प्रशिक्षित विद्यार्थियों के बारे में बुंदेलखण्ड विश्वविद्यालय, झांसी, उत्तर प्रदेश, द्वारा 1982 में अथवा बाद में प्रदान की गई हो।)
“प्रसूति एवं स्त्री रोग विज्ञान में डिप्लोमा”	डीजीओ (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह एमएलबी मेडिकल कॉलेज, झांसी, उत्तर प्रदेश, में प्रशिक्षित विद्यार्थियों के बारे में बुंदेलखण्ड विश्वविद्यालय, झांसी, उत्तर प्रदेश, द्वारा 1981 में अथवा बाद में प्रदान की गई हो।)
“मास्टर आफ सर्जरी (आर्थोपेडिक्स) ”	एमएस (आर्थोपेडिक्स) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह एमएलबी मेडिकल कॉलेज, झांसी, उत्तर प्रदेश, में प्रशिक्षित विद्यार्थियों के बारे में बुंदेलखण्ड विश्वविद्यालय, झांसी, उत्तर प्रदेश, द्वारा 1984 में अथवा बाद में प्रदान की गई हो।)
“डिप्लोमा इन आर्थोपेडिक्स”	डी.आर्थो. (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह एमएलबी मेडिकल कॉलेज, झांसी, उत्तर प्रदेश, में प्रशिक्षित विद्यार्थियों के बारे में बुंदेलखण्ड विश्वविद्यालय, झांसी, उत्तर प्रदेश, द्वारा 1984 में अथवा बाद में प्रदान की गई हो।)
(ग) “दीनदयाल उपाध्याय गोरखपुर, गोरखपुर विश्वविद्यालय, उत्तर प्रदेश” के समक्ष “मान्यता प्राप्त चिकित्सा अर्हता” [इसके बाद कॉलम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत और “पंजीकरण के लिए संक्षेपण” [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :—	
2	3
“डाक्टर ऑफ मेडिसिन” (जनरल मेडिसिन)	एमडी (जनरल मेडिसिन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह बीआरडी मेडिकल कॉलेज, गोरखपुर, उत्तर प्रदेश, में प्रशिक्षित विद्यार्थियों के बारे में “दीनदयाल उपाध्याय गोरखपुर, गोरखपुर विश्वविद्यालय, उत्तर प्रदेश,” द्वारा 1982 में अथवा बाद में प्रदान की गई हो।)

[सं. यू. 12012/83/2010-एमई (पी-II)]

अनिता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Health and Family Welfare)

New Delhi, the 16th November, 2011

S.O. 803.—In exercise of the powers conferred by sub-section (2) of Section 11 of the Indian Medical Council Act, 1956(102 of 1956), the Central Government, after consulting the Medical Council of India hereby, makes the

following further amendments in the First Schedule to the said Act, due to change in name of affiliating University, namely :—

(a) against “Santosh University, Ghaziabad” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)] after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted, namely :—

2	3
“Master of Surgery (Obstetrics & Gynaecology)”	MS (OBG) This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Doctor of Medicine (Tuberculosis & respiratory Diseases/Pulmonary Medicine)”	MS (TB & Resp. Disease/Pulmo. Medicine) This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Diploma in tuberculosis & Chest Diseases”	DTCD This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Doctor of Medicine (Physiology)”	MD (Physiology) This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Doctor of Medicine (Biochemistry)”	MD (Biochemistry) This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Doctor of Medicine (Microbiology)”	MD (Microbiology) This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Doctor of Medicine (Psychiatry)”	MD (Psychiatry) This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Diploma in Psychological Medicine”	DPM This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.
“Doctor of Medicine (Community Medicine)”	MD (Community Medicine) (This shall be a recognized medical qualification when granted by Santosh University, Ghaziabad in respect of students being trained at Santosh Medical College, Ghaziabad on or after May, 2011.)

(b) against “Bundelkhand University, Jhansi Uttar Pradesh” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)] after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted namely :—

“Master of Surgery (Obstetrics & Gynaecology)”	MS (OBG) (This shall be a recognized medical qualification when granted by Bundelkhand University, Jhansi, Uttar Pradesh in respect of students being trained at M.L.B. Medical College, Jhansi, Uttar Pradesh on or after 1982).
“Diploma in Obstetrics & Gynaecology”	DGO (This shall be a recognized medical qualification when granted by Bundelkhand University, Jhansi, Uttar Pradesh in respect of students being trained at M.L.B. Medical College, Jhansi, Uttar Pradesh on or after 1981).
“Master of Surgery (Orthopaedics)”	MS (Orthopaedics) (This shall be a recognized medical qualification when granted by Bundelkhand University, Jhansi, Uttar Pradesh in respect of students being trained at M.L.B. Medical College, Jhansi, Uttar Pradesh on or after 1984).
“Diploma in Orthopaedics”	D. Ortho. (This shall be a recognized medical qualification when granted by Bundelkhand University, Jhansi, Uttar Pradesh in respect of students being trained at M.L.B. Medical College, Jhansi, Uttar Pradesh on or after 1984).
(c) against “Deen Dayal Upadhyay Gorakhpur University/Gorakhpur, University, Uttar Pardesh” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted namely :—	
“Doctor of Medicine (General Medicine)”	MD (General Medicine) (This shall be a recognized medical qualification when granted by Deen Dayal Upadhyay Gorakhpur University/Gorakhpur, University, Uttar Pardesh in respect of students being trained at B.R.D. Medical College, Gorakhpur, Uttar Pradesh on or after 1982).

[No. U-12012/83/2011-ME (P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 23 नवम्बर, 2011

का. आ. 804.—केन्द्र सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय चिकित्सा परिषद् से परामर्श करने के बाद अहंता की नामावली में परिवर्तन के कारण उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में—

(क) मान्यताप्राप्त चिकित्सा अहंता शीर्षक [इसके बाद कॉलम (2) के रूप में संर्भित] के अंतर्गत “कश्मीर विश्वविद्यालय” के सामने पंजीकरण के लिए संक्षेपण [इसके बाद कॉलम (3) के रूप में संर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामत :—

“स्त्री एवं प्रसूति रोग विज्ञान में डिप्लोमा”

डी जी ओ

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह गर्वनमेंट मेडिकल कॉलेज, श्रीनगर, जम्मू व कश्मीर में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में कश्मीर विश्वविद्यालय, द्वारा वर्ष 1998 में या उसके बाद प्रदान की गई हो)।

(ख) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत और “अमृता विश्व विद्यापीठम विश्वविद्यालय, कोयम्बूरू” के सामने पंजीकरण के संक्षेपण [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामतः :—

“मास्टर ऑफ सर्जरी (आपथेलमोलोजी)”

एमडी (आपथेलमोलोजी)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह अमृता स्कूल आफ मेडिसिन, कोच्ची, केरल में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में अमृता विश्व विद्यापीठम विश्वविद्यालय, कोयम्बूरू द्वारा मई, 2011 में अथवा उसके बाद प्रदान की गई हो)।

“डाक्टर ऑफ मेडिसिन (एलेस्थीसिया)”

एम डी (एनेस्थीसिया)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह अमृता स्कूल आफ मेडिसिन, कोच्ची, केरल में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में अमृता विश्व विद्यापीठम विश्वविद्यालय, कोयम्बूरू द्वारा मई, 2011 में अथवा उसके बाद प्रदान की गई हो)।

(ग) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत पंजाब विश्वविद्यालय के सामने पंजीकरण के संक्षेपण [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामतः :—

“मास्टर ऑफ सर्जरी (कान, नाक व गला)”

एम एस (ई एन टी)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह गर्वनमेंट मेडिकल, कालेज चंडीगढ़ में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में पंजाब विश्वविद्यालय, द्वारा मई, 2011 में अथवा उसके बाद प्रदान की गई हो)।

(घ) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत “राजस्थान स्वास्थ्य विज्ञान विश्वविद्यालय, जयपुर” के सामने पंजीकरण के संक्षेपण [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामतः :—

“डाक्टर ऑफ मेडिसिन (डरमेटोलोजी, वेनरोलोजी व लेप्रोजी)”

एम डी (डी वी एल)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह सरदार पटेल मेडिकल, कालेज बीकानेर, राजस्थान में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजस्थान स्वास्थ्य विज्ञान विश्वविद्यालय, जयपुर द्वारा जून, 2011 में अथवा उसके बाद प्रदान की गई हो)।

(ङ) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत “दी तमिलनाडु डॉ. एम जी आर मेडिकल यूनिवर्सिटी, चेन्नई” के सामने पंजीकरण के संक्षेपण [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामतः :—

“डाक्टर ऑफ मेडिसिन (एनेस्थीसिया)”

एम डी (एनेस्थीसिया)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह चैंगलपटू मेडिकल, कालेज चैंगलनाडू, तमिलनाडू में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में “दी तमिलनाडू डॉ. एम जी आर मेडिकल यूनिवर्सिटी, चेन्नई” द्वारा मई, 2010 में अथवा उसके बाद प्रदान की गई हो)।

“क्षयरोग एवं वक्ष रोग में डिप्लोमा”

डी टी सी डी

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह पी एस जी इंस्टीट्यूट ऑफ मेडिकल साइंसेज एंड रिसर्च, कोयम्बटूर में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में “दी तमिलनाडू डॉ. एम जी आर मेडिकल यूनिवर्सिटी, चेन्नई” द्वारा मई, 2010 में अथवा उसके बाद प्रदान की गई हो)।

(च) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत श्री बालाजी विद्यापीठ विश्वविद्यालय, पांडिचेरी के सामने पंजीकरण के संक्षेपण [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामतः :—

“डाक्टर ऑफ मेडिसिन(एनेस्थीसिया)”

एम डी (एनेस्थीसिया)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह महात्मा गांधी मेडिकल, कालेज एंड रिसर्च इंस्टीट्यूट, पांडिचेरी में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में “श्री बालाजी विद्यापीठ विश्वविद्यालय, पांडिचेरी” द्वारा अप्रैल, 2011 में अथवा उसके बाद प्रदान की गई हो)।

(छ) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत “विनायक मिशन विश्वविद्यालय, सलेम, तमिलनाडू” के सामने पंजीकरण के संक्षेपण [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामतः :—

“डिप्लोमा इन आर्थोपेडिक्स”

डी आर्थो

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह विनायक मिशन किरूपानन्दा वरियर मेडिकल कालेज, सलेम, तमिलनाडू में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में विनायक मिशन विश्वविद्यालय, सलेम, तमिलनाडू द्वारा मई, 2011 में अथवा उसके बाद प्रदान की गई हो)।

(ज) मान्यताप्राप्त चिकित्सा अर्हता शीर्षक [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत “पश्चिम बंगाल स्वास्थ्य विज्ञान विश्वविद्यालय, कोलकाता” के सामने पंजीकरण के लिए संक्षेपण [इसके बाद कॉलम (3) के रूप में संदर्भित] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, नामतः :—

“डाक्टर ऑफ मेडिसिन”(एनेस्थीसिया)”

एम डी (एनेस्थीसिया)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह कलकत्ता नेशनल मेडिकल कालेज, कोलकाता में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में पश्चिम बंगाल स्वास्थ्य विज्ञान विश्वविद्यालय, कोलकाता द्वारा अप्रैल, 2011 में अथवा उसके बाद प्रदान की गई हो)।

“मास्टर ऑफ सर्जरी” (प्रसूति एवं स्त्री रोग विज्ञान)

एमएस (ओबीजी)

(यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह कमाण्ड हॉस्पीटल, कोलकाता में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में पश्चिम बंगाल स्वास्थ्य विज्ञान विश्वविद्यालय, कोलकाता द्वारा मई, 2011 में अथवा उसके बाद प्रदान की गई हो)।

सभी के लिए टिप्पणी :

1. स्नातकोत्तर पाठ्यक्रम के लिए स्वीकृत मान्यता 5 वर्ष की अधिकतम अवधि के लिए होगी जिसके बाद इसकी पुनरीक्षा की जाएगी।
2. उप-धारा 4 में अपेक्षित अनुसार मान्यता को समय पर नवीकरण नहीं कराने के फलस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रमों में निरपवाद रूप से दखिला बंद हो जाएगा।

[सं. यू. 12012/87/2011-एम ई (पी-II)]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 23rd November, 2011

S.O. 804.—In exercise of the powers conferred by sub-section (2) of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India hereby, makes the following further amendments in the First Schedule to the said Act, due to change of nomenclature of the qualification namely :—

In the said Schedule —

(a) against “University of Kashmir” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)] , after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted namely :—

2	3
“Diploma in Gynaecology & Obstetrics”	DGO (This shall be a recognized medical qualification when granted by University of Kashmir in respect of the students being trained at Govt. Medical College, Srinagar, Jammu & Kashmir on or after, 1998).
“Master of Surgery (Ophthalmology)”	MS (Ophthalmology) (This shall be a recognized medical qualification when granted by Amrita Vishwa Vidyapeetham University, Coimbatore in respect of students being trained at Amrita School of Medicine, Kochi, Kerala on or after May, 2011).
“Doctor of Medicine (Anaesthesia)”	MD (Anaesthesia) (This shall be a recognized medical qualification when granted by Amrita Vishwa Vidyapeetham University, Coimbatore in respect of students being trained at Amrita School of Medicine, Kochi, Kerala on or after May, 2011).
“Master of Surgery (Ear, Nose & Throat)”	MS (ENT) (This shall be a recognized medical qualification when granted by Punjab University, in respect of students being trained at Govt. Medical College, Chandigarh on or after May, 2011).
(d) against “Rajasthan University of Health Sciences, Jaipur” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted namely :—	

“Doctor of Medicine (Dermatology, Venerology & Leprosy)”

MD (DVL)

(This shall be a recognized medical qualification when granted by Rajasthan University of health Sciences, Jaipur in respect of students being trained at Sardar Patel Medical College, Bikaner, Rajasthan on or after June, 2011).

(e) against “The Tamilnadu Dr. MGR Medical University Chennai ” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)] , after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted namely :—
“Doctor of Medicine (Anaesthesia)”

MD (Anaesthesia)

(This shall be a recognized medical qualification when granted by The Tamilnadu Dr. MGR Medical University Chennai in respect of students being trained at Chengalpattu Medical College, Chengalpattu Tamil Nadu on or after May, 2010).

“Diploma in Tuberculosis & Chest Diseases”

DTCD

(This shall be a recognized medical qualification when granted by The Tamilnadu Dr. MGR Medical University Chennai in respect of students being trained at PSG Institute of Medical Sciences & Reserch, Coimbatore on or after May, 2011).

(f) against “ Sri Balaji Vidyapeeth University, Pondicherry ” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)] , after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted namely :—
“Doctor of Medicine (Anaesthesia)”

MD (Anaesthesia)

(This shall be a recognized medical qualification when granted by Sri Balaji Vidyapeeth University Pondicherry in respect of students being trained at Mahatma Gandhi Medical College & Research Institute Pondicherry on or after April, 2011).

(g) against “ Vinayaka Mission’s University Salem, Tamilnadu ” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)] , after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)] the following shall be inserted namely :—
“Diploma in Orthopaedics”

D. Ortho.

(This shall be a recognized medical qualification when granted by Vinayaka Mission’s University, Salem, Tamilnadu in respect of students being trained at Vinayaka Mission’s Kirupananda Variyar Medical College, Salem, Tamilnadu on or after May, 2011).

(h) against “ The West Bengal University of Health Sciences, Kolkata ” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)] , after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted namely :—
“Doctor of Medicine (Anaesthesia)”

MD (Anaesthesia)

(This shall be a recognized medical qualification when granted by The West Bengal University of Health Sciences, Kolkata in respect of students being trained at Calcutta National Medical College, Kolkata on or after April, 2011).

“Master of Surgery (Obstetrics & Gynaecology)”

MS (OBG)

(This shall be a recognized medical qualification when granted by The West Bengal University of Health Sciences, Kolkata in respect of students being trained at Command Hospital, Kolkata on or after May, 2011).

Note to all :

1. The recognition so granted to a Postgraduate Course shall be for a Maximum period of 5 years, upon which it shall have to be renewed.
2. Failure to seek timely renewal of recognition as required in sub -clause 4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

नई दिल्ली, 2 फरवरी, 2012

का. आ. 805.—केन्द्रीय सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के बाद, उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में —

(क) “रानी दुर्गावती विश्वविद्यालय, मध्य प्रदेश” के समक्ष शीषक ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके बाद कॉलम (2) के रूप में संदर्भित] के अन्तर्गत शीषक “पंजीकरण के लिए संक्षेपण” [इसके बाद कॉलम (3) के रूप में संदर्भित] के अन्तर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
“डाक्टर ऑफ मेडिसिन (विकिरण चिकित्सा)”	एम.डी. (विकिरण चिकित्सा) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह नेताजी सुभाष चन्द्र बोस मेडिकल कॉलेज, जबलपुर, मध्य प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के बारे में रानी दुर्गावती विश्वविद्यालय, मध्य प्रदेश द्वारा 1996 में या उसके उपरान्त प्रदान की गई हो।)

सभी के लिए टिप्पणी : 1. स्नातकोत्तर पाठ्यक्रम को प्रदान की गई ऐसी मान्यता की अधिकतम अवधि 5 वर्षों के लिए होगी जिसके उपरान्त इसका नवीकरण करना होगा।

2. मान्यता को उप-खंड 4 की आवश्यकता के अनुसार समय पर नवीकरण न कराये जाने पर संबंधित स्नातकोत्तर पाठ्यक्रम में प्रवेश निरपवाद रूप से बंद हो जाएंगे।

[सं. यू.12012/8/2012-एम ई (पी-II)]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 2nd February, 2012

S.O. 805.—In exercise of the powers conferred by sub-section (2) of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule—

(a) against “Rani Durgawati Vishwavidhalaya, Madhya Pradesh” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
“Doctor of Medicine (Radiotherapy)”	MD (Radiotherapy) (This shall be a recognized medical qualification when granted by Rani Durgawati Vishwavidhalaya, Madhya Pradesh in respect of students being trained at Netaji Subhash Chandra Bose Medical College, Jabalpur, Madhya Pradesh on or after, 1996).

Note to all : 1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.
2. Failure to seek timely renewal of recognition as required in sub-clause 4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U. 12012/8/2012-ME (P-II)]

ANITA TRIPATHI, Under Secy.

वस्त्र मंत्रालय

नई दिल्ली, 31 जनवरी, 2012

का.आ. 806.—केन्द्रीय सरकार, संघ के शासकीय प्रयोजनों के लिए राजभाषा नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालयों को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. बुनकर सेवा केन्द्र, भारत नगर, दिल्ली ।
2. बुनकर सेवा केन्द्र, असंध रोड, कच्चा कैप, पानीपत ।
3. बुनकर सेवा केन्द्र, मंगल पांडे नगर, स्कीम नं. 1, विश्वविद्यालय रोड, मेरठ, उत्तर प्रदेश ।
4. बुनकर सेवा केन्द्र, बरारी, भागलपुर, बिहार ।
5. बुनकर सेवा केन्द्र, चौकाघाट, वाराणसी, उत्तर प्रदेश ।
6. बुनकर सेवा केन्द्र, कामधेनु कर्मशियल कम्पलैक्स, सिविल लाइंस, अजमेर रोड, जयपुर ।
7. बुनकर सेवा केन्द्र, 15-ए, मामा परमानंद मार्ग, ओपेरा हाउस, मुंबई ।
8. बुनकर सेवा केन्द्र, पहला माला, नई सचिवालय इमारत, सिविल लाइंस, नागपुर ।
9. भारतीय हथकरघा प्रौद्योगिकी संस्थान, राधाकृष्णपुरम, ग्राम चौखा, जोधपुर, राजस्थान ।
10. राष्ट्रीय हस्तशिल्प एवं हथकरघा संग्रहालय, प्रगति मैदान, नई दिल्ली ।

[फा. सं. ई-11016/1/2011-हिंदी]

सुनयना तोमर, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 31st January, 2012

S.O. 806.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for the Official purpose of the Union) Rules, 1976, the Central Government, hereby, notifies the following offices of the Ministry of Textiles, more than 80% staff whereof have acquired working knowledge of Hindi:—

1. Weavers Service Centre, Bharat Nagar, Delhi.
2. Weavers Service Centre, Asandh Road, Kachcha Camp, Panipat.
3. Weavers Service Centre, Mangal Pandey Nagar, Scheme No.1, University Road, Meerut, Uttar Pradesh.
4. Weavers Service Centre, Barari, Bhagalpur, Bihar.
5. Weavers Service Centre, Choukaghata, Varanasi, Uttar Pradesh.
6. Weavers Service Centre, Kamdhenu Commercial Complex, Civil Lines, Ajmer Road, Jaipur.
7. Weavers Service Centre, 15-A, Mama Parmanand Marg, Opera House, Mumbai.
8. Weavers Service Centre, Pahala Mala, New Sachivalaya Building, Civil Lines, Nagpur.
9. Indian Institute of Handloom Technology, Radhakrishnapuram, Village Choukha, Jodhpur, Rajasthan.
10. National Handicrafts and Handlooms Museum, Pragati Maidan, New Delhi.

[F.No. E-11016/1/2011-Hindi]

SUNAINA TOMAR, Jt. Secy.

विद्युत मंत्रालय

नई दिल्ली, 17 फरवरी, 2012

का.आ. 807.—दिनांक 17-8-2006 को अधिसूचित मुख्य वैद्युत निरीक्षक एवं वैद्युत निरीक्षक की अर्हता शक्ति एवं कार्य नियमावली, 2006 के साथ पठित विद्युत अधिनियम, 2003 (2003 का 36) की धारा 162 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र, सरकार एतद्वारा उपर्युक्त नियम में उल्लिखित अर्हता एवं शर्तों के अध्यधीन, दिल्ली मैट्रो रेल कारपोरेशन लिमिटेड, नई दिल्ली के निम्नलिखित अधिकारियों को डीएमआरसी में उनके कार्यकाल के पूरा होने तक मुख्य वैद्युत निरीक्षक/वैद्युत निरीक्षक के रूप में नियुक्त करती है—

क्र. सं.	अधिकारी का नाम	पदनाम	अर्हता	के पद पर नियुक्ति
1.	श्री एस.सी. जिन्दल	मुख्य वैद्युत अभियंता	वैद्युत इंजीनियरिंग में बीएससी (ऑनर्स)	मुख्य वैद्युत निरीक्षक
2.	श्री ओ.एच. पांडे	मुख्य महाप्रबंधक	बी.ई. (वैद्युत)	मुख्य वैद्युत निरीक्षक
3.	श्री महेन्द्र कुमार	मुख्य वैद्युत अभियंता	बीएससी इंजीनियरिंग (वैद्युत)	मुख्य वैद्युत निरीक्षक
4.	श्री ए.के. सिंह	मुख्य वैद्युत अभियंता	बी.टेक. (वैद्युत)	मुख्य वैद्युत निरीक्षक
5.	श्री एम.के. सिंघल	मुख्य वैद्युत अभियंता	बी.ई. (ऑनर्स) इलेक्ट्रिकल एवं इलेक्ट्रॉनिक्स	मुख्य वैद्युत निरीक्षक
6.	श्री संजय कुमार	संयुक्त महाप्रबंधक, वैद्युत	बी.ई. (वैद्युत)	वैद्युत निरीक्षक
7.	श्रीमती विजया लक्ष्मी	उप मुख्य वैद्युत अभियंता	बी.ई. (वैद्युत)	वैद्युत निरीक्षक
8.	श्री डी.एस. परमार	उप मुख्य वैद्युत अभियंता	बी.टेक (वैद्युत)	वैद्युत निरीक्षक
9.	श्री मुकेश वधवा	उप महाप्रबंधक/वैद्युत	बी.ई. (वैद्युत)	वैद्युत निरीक्षक

उपर्युक्त अधिकारी, केन्द्रीय विद्युत प्राधिकरण (सुरक्षा एवं विद्युत आपूर्ति से संबंधित उपाय) विनियम, 2010 में दी गई प्रक्रिया के अनुसार, डीएमआरसी के प्रभाव वाले क्षेत्रों के भीतर वैद्युत कार्यों, वैद्युत संस्थापनाओं और वैद्युत रोलिंग स्टॉक प्रचालनों के संबंध में अथवा डीएमआरसी के नियंत्रणधीन/डीएमआरसी से संबंधित कार्यों तथा सभी वैद्युत संस्थापनाओं के संबंध में अपनी-अपनी शक्तियों का प्रयोग करेंगे और अपने-अपने कार्यों का निष्पादन करेंगे।

डीएमआरसी यह सुनिश्चित करेगा कि मुख्य वैद्युत निरीक्षक/वैद्युत निरीक्षक के रूप में नियुक्त अधिकारी डीएमआरसी में उनको सौंपे गए कार्य के संबंध में वैद्युत निरीक्षक नहीं होंगे।

वैद्युत निरीक्षक के रूप में नियुक्त व्यक्ति वह प्रशिक्षण प्राप्त करेंगे जो केन्द्र सरकार इस उद्देश्य के लिए आवश्यक समझे और यह प्रशिक्षण सरकार की संतुष्टि के स्तर तक पूरा किया जाएगा।

[फा. सं. 42/3/2010-आर एंड आर]

ज्योति अरोड़ा, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 17th February, 2012

S.O. 807.—In exercise of the powers conferred by sub-section (1) of Section 162 of the Electricity Act, 2003 (36 of 2003) read with qualification, power and function of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 notified on 17-8-2006, the Central Government hereby appoints following Officers of Delhi Metro Rail Corporation Ltd., New Delhi as Chief Electrical Inspector/Electrical Inspector till their tenure in DMRC, subject to the qualification and condition mentioned in above Rule :

Sl. No.	Name of the Officers	Designation	Qualification	Appointed as
1	2	3	4	5
1.	Sh. S.C. Jindal	Chief Electrical Engineer	B.Sc. Engg (Hons) in Electrical Engineering	Chief Electrical Inspector
2.	Sh. O.H. Pande	Cheif General Manager	B.E (Elect)	Chief Electrical Inspector
3.	Sh. Mahendra Kumar	Chief Electrical Engineer	B.Sc. Engineering (Elect)	Chief Electrical Inspector
4.	Sh. A.K. Singh	Chief Electrical Engineer	B.Tech (Elect)	Chief Electrical Inspector
5.	Sh. M.K. Singhal	Chief Electrical Engineer	B.E.(Hons.) Electrical & Electronics	Chief Electrical Inspector

1	2	3	4	5
6.	Sh. Sanjay Kumar	Joint Gen. Manager, Electrical	B.E. (Elect)	Electrical Inspector
7.	Smt. Vijaya Laxmi	Dy. Chief Electrical Engineer	B.E. (Electrical)	Electrical Inspector
8.	Sh. D.S. Parmar	Dy. Chief Electrical Engineer	B.Tech (Elect)	Electrical Inspector
9.	Sh. Mukesh Wadhwa	Dy. Gen. Manager/Electrical	B.E. (Elect)	Electrical Inspector

The above mentioned officers shall exercise the powers and perform their respective functions in respect of electrical works, electrical installations and electrical rolling stock in operation within the areas occupied by the DMRC or in respect of works and all electrical installations under the control of DMRC/belonging to DMRC as per the procedure provided in Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010.

DMRC will ensure that the officers appointed as Chief Electrical Inspectors/Electrical Inspectors will not be Electrical Inspector in respect of the work assigned to them in DMRC.

The person appointed as Electrical Inspector shall undergo such training as the Central Government may consider it necessary for the purpose and such training shall be completed to the satisfaction of the Government.

[F.No. 42/3/2010-R&R]

JYOTI ARORA, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 23 फरवरी, 2012

का.आ. 808.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) के अधीन भारत सरकार में कोयला मंत्रालय के द्वारा जारी की गई अधिसूचना संख्या का.आ. 2555, तारीख 8 अक्टूबर, 2010, जो भारत के राजपत्र के भाग II, खंड 3, उप-खंड (ii), तारीख 16 अक्टूबर, 2010 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 328.056 हेक्टर (लगभग) या 810.63 एकड़ (लगभग) है, कोयले का पूर्वक्षण करने के अपने आशय की सूचना दी थी;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में निहित उक्त भूमि के भाग में कोयला अभिप्राप्त है;

अतः, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इससे संलग्न अनुसूची में वर्णित 327.862 हेक्टर (लगभग) या 810.14 एकड़ (लगभग) माप की उक्त भूमि का अर्जन करने के अपने आशय की सूचना देती है।

टिप्पण 1 : इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/सीजीएम(पीएलजी)/भूमि/412, तारीख 26 सितम्बर, 2011 का निरीक्षण कलेक्टर, जिला-शहडोल (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, कार्डिसिल हाउस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग) सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

टिप्पण 2 : उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध हैं।

अर्जन के बाबत् आपत्तियाँ :—

“8(1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत् धारा 7(1) के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण,—

(1) इस धारा के अन्तर्गत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियाएं करना चाहता है और ऐसी संक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उप-धारा (1) के अधीन प्रत्येक आपत्ति सक्षम अधिकारी को लिखित रूप में की जाएगी और सक्षम अधिकारी, आपत्तिकर्ता को स्वयं सुने जाने, विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जाँच, यदि कोई हो, करने के पश्चात्, जो वह आवश्यक समझता है, वह या तो धारा 7 की उप-धारा (1) के अधीन अधिसूचित भूमि का या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़े या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होगा, यदि भूमि या किसी ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते हैं।”

टिप्पण 3 : केन्द्रीय सरकार ने कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700001 को भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), तारीख 4 अप्रैल, 1987 में प्रकाशित अधिसूचना संख्यांक का.आ. 905, तारीख 20 मार्च, 1987 उक्त अधिनियम की धारा 3 के अधीन सक्षम प्राधिकारी नियुक्त किया है।

अनुसूची

दामनी भूमिगत खान ब्लाक, सोहागपुर क्षेत्र,
जिला-शहडोल (मध्य प्रदेश)

(रेखांक संख्या एसईसीएल/बीएसपी/सीजीएम(पीएलजी)/भूमि/412, तारीख 26 सितम्बर, 2011)

1. ब्लाक-1 :

(क) राजस्व भूमि :

क्र.सं.	ग्राम का नाम	पटवारी हल्का नम्बर	बंदोबस्त संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	खरैहा	93	203	सोहागपुर	शहडोल	82.395	भाग
2.	कन्दोहा	93	67	सोहागपुर	शहडोल	28.365	भाग
कुल : 110.760 हेक्टर (लगभग) या 273.69 एकड़ (लगभग)							

(ख) राजस्व वन भूमि :

क्र.सं.	ग्राम का नाम	पटवारी हल्का नम्बर	बंदोबस्त संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	खरैहा	93	203	सोहागपुर	शहडोल	0.182	भाग
कुल : 0.182 हेक्टर (लगभग) या 0.45 एकड़ (लगभग)							
उप योग : 100.942 हेक्टर (लगभग) या 274.14 एकड़ (लगभग)							

2. ब्लाक-2 :

(क) राजस्व भूमि :

क्र.सं.	ग्राम का नाम	पटवारी हल्का नम्बर	बंदोबस्त संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	कन्दोहा	93	67	सोहागपुर	शहडोल	184.145	भाग
2.	धमनीकला	95	469	सोहागपुर	शहडोल	8.015	भाग
3.	धमनीखुर्द	95	468	सोहागपुर	शहडोल	8.448	भाग

कुल : 200.608 हेक्टर (लगभग) या 495.70 एकड़ (लगभग)

(ख) राजस्व वन भूमि :

क्र.सं.	ग्राम का नाम नम्बर	पटवारी हल्का	बंदोबस्त संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणी
1.	कन्दोहा	93	67	सोहागपुर	शहडोल	12.901	भाग
2.	धमनीखुर्द	95	468	सोहागपुर	शहडोल	3.411	भाग

कुल : 16.312 हेक्टर (लगभग) या 40.30 एकड़ (लगभग)

उप योग : 216.920 हेक्टर (लगभग) या 536.00 एकड़ (लगभग)

कुल राजस्व भूमि : 110.760 + 200.608 = 311.368 हेक्टर (लगभग) या 769.39 एकड़ (लगभग)

कुल राजस्व वन भूमि: 0.182 + 16.312 = 16.494 हेक्टर (लगभग) या 40.75 एकड़ (लगभग)

कुल योग (ब्लाक 1 + 2): 110.942 + 216.920 = 327.862 हेक्टर (लगभग)

या 274.14 + 536 .00 = 810.14 एकड़ (लगभग)

1. ग्राम खेरहा (भाग) में अर्जित किए जाने वाले प्लाट संख्या :— 55(भाग), 215(भाग), 216, 217, 240, 241(भाग), 243(भाग), 244 से 268, 269(भाग), 270(भाग), 271(भाग), 299(भाग), 303(भाग), 304(भाग), 316 से 326, 327(भाग), 328 से 339, 340(भाग), 341(भाग), 342 से 352, 353(भाग), 354(भाग), 355(भाग), 356(भाग), 357(भाग), 398(भाग), 441 (भाग), 442, 443(भाग), 446 से 468, 469(भाग), 470(भाग), 472(भाग), 473(भाग), 474, 475(भाग), 476 से 506, 507(भाग), 508 से 519, 1129, 1130(भाग)।

2. ग्राम कन्दोहा (भाग) में अर्जित किए जाने वाले प्लाट संख्या :— 7(भाग), 8 से 18, 19(भाग), 20(भाग), 21 (भाग), 22, 23, 24(भाग), 26 से 32, 33(भाग) से 40(भाग), 41 से 103, 104(भाग), 105(भाग), 106, 107(भाग), 108 से 115, 116(भाग), 117(भाग), 118(भाग), 128(भाग), 129/1(भाग), 129/2, 130, 132(भाग), 133, 143 से 148, 151 से 194, 216(भाग), 217(भाग), 218(भाग), 222(भाग), 283 से 310, 311(भाग), 312, 320(भाग), 324(भाग), 325 से 331, 334(भाग), 335 से 347, 348/1, 348/2(भाग), 349, 350, 351(भाग), 373(भाग) से 377(भाग), 378 से 380, 381(भाग), 382(भाग), 387(भाग), 388/1, 388/2(भाग), 389, 390, 391/3 से 391/8, 391/12 से 391/14, 392(भाग), 393(भाग), 394 से 401, 402(भाग), 403(भाग), 173/410, 115/411 (भाग), 348/412 ।

3. ग्राम धमनीकला (भाग) में अर्जित किए जाने वाले प्लाट संख्या :—106(भाग), 107(भाग), 132 से 134, 135/1(भाग), 135/2, 136(भाग) ।

4. ग्राम धमनीखुर्द (भाग) में अर्जित किए जाने वाले प्लाट संख्या :—1 से 7, 8(भाग) से 11(भाग), 38(भाग), 40(भाग), 4/165 ।

सीमा वर्णन :

ब्लाक-1 :

क-ख रेखा ग्राम खेरहा में बिन्दु “क” से आरंभ होती है और प्लाट संख्या 339, 319, 55 के पश्चिमी सीमा से होती हुए जाती है और सरफा नाला के पूर्वी किनारे पर बिन्दु “ख” पर मिलती है ।

ख-ग रेखा ग्राम खेरहा के प्लाट संख्या 55 से होकर प्लाट संख्या 317, 316, 323 के उत्तरी सीमा के साथ-साथ जाती हुई प्लाट संख्या 304, 327, 269, 270, 271, 243, 241 से होकर गुजरती हुई 240 के उत्तरी सीमा के साथ-साथ जाती है फिर प्लाट संख्या 246 से होकर 217 की उत्तरी सीमा के साथ- साथ जाती हुई प्लाट संख्या 215, 507 से होकर जाती है और ग्राम खेरहा-कन्दोहा के सम्मिलित सीमा पर बिन्दु “ग” पर मिलती है ।

ग-घ रेखा ग्राम कन्दोहा के प्लाट संख्या 30, 31, 30, 14, 12, 11, 9, 8 के पश्चिमी सीमा के साथ-साथ जाती है, प्लाट संख्या 8, 7, 19 के उत्तरी सीमा के साथ-साथ जाती है और बिन्दु “घ” पर मिलती है ।

घ-ड रेखा ग्राम कन्दोहा के प्लाट संख्या 19, 20, 21, 24/1, 24/2, 26, 33, 107 से होकर प्लाट संख्या 106 के पूर्वी सीमा के साथ-साथ जाती हुई, प्लाट संख्या 105 से होकर गुजरती है फिर प्लाट संख्या 115 के पूर्वी सीमा के साथ-साथ जाती हुई, प्लाट संख्या 411, 116, 117, 118, 216, 217, 218, 222, 223, 322 से गुजरती है और ग्राम खेरहा-कन्दोहा के सम्मिलित सीमा में बिन्दु “ड” पर मिलती है ।

ड-क रेखा ग्राम खैरहा और प्लाट संख्या 517, 519, 446, के दक्षिणी सीमा साथ-साथ जाती हुई और प्लाट संख्या 443 से होकर गुजरती है, प्लाट संख्या 441 के पश्चिमी सीमा के साथ-साथ जाती हुई और प्लाट संख्या 470, 469, 472, 473, 475, 398, 1130, 355, 354, 353, 356, 357, 341, 340 से गुजरती है फिर प्लाट संख्या 340, 339 के दक्षिणी सीमा के साथ-साथ जाती है और आरंभिक बिन्दु “क” पर मिलती है।

ब्लाक-2 :

क-1-ख-1 रेखा ग्राम कन्दोहा में बिन्दु “क-1” से आरंभ होती है और प्लाट संख्या 324 के पश्चिमी सीमा के साथ-साथ जाती है और नाला के पूर्वी किनारे पर बिन्दु “ख-1” पर मिलती है।

ख-1-ग-1- रेखा ग्राम कन्दोहा में प्लाट संख्या 324, 329, 330, 331, के उत्तरी सीमा के साथ-साथ जाती है और प्लाट संख्या 324, 348/2,

घ-1 334, 320, 311 से होकर प्लाट संख्या 310, 287 के पश्चिमी सीमा के साथ-साथ जाती है, प्लाट संख्या 287, 286, 285 के उत्तरी सीमा के साथ-साथ जाती है, प्लाट संख्या 284, 283, 192, 193, 194, 191, 152, 153 के पश्चिमी सीमा के साथ-साथ जाती है, प्लाट संख्या 147, 143, 133 के दक्षिणी सीमा के साथ-साथ जाती हुई और प्लाट संख्या 132 से होकर गुजरती है फिर 102 के दक्षिणी सीमा के साथ-साथ जाती है, प्लाट संख्या 130, 129/2 के पूर्वी सीमा के साथ-साथ जाती है, प्लाट संख्या 129/2, 129/1 के दक्षिणी सीमा से होती हुई जाती है और बिन्दु “घ-1” पर मिलती है।

घ-1-ड-1 रेखा ग्राम कन्दोहा में प्लाट संख्या 129/1, 128, 105, 104, 100, 99, 98, 97, 33, 34, 35, 36, 37, 38, 40 से गुजरती हुई नाला के दक्षिणी किनारे में बिन्दु “ड-1” पर मिलती है।

ड-1-च-1 रेखा ग्राम कन्दोहा के प्लाट संख्या 40, 41, 42, 56, 57, 58, 64, 65 के उत्तरी सीमा के साथ-साथ जाती है, प्लाट संख्या 65, 66, 164/1, 391/3 के पूर्वी सीमा के साथ-साथ जाती है फिर ग्राम छिरहटी-धमनीखुर्द के भागतः सम्मिलित सीमा से होती हुई जाती है और बिन्दु “च-1” पर मिलती है।

च-1-छ-1 रेखा ग्राम धमनीखुर्द के प्लाट संख्या 11, 10, 9, 38, 8, 38, 40 से होकर ग्राम कन्दोहा में प्रवेश कर प्लाट संख्या 393 से होकर ग्राम धमनीकला में प्रवेश करती है और प्लाट संख्या 135/1, 136 से होती हुई बिन्दु “छ-1” पर मिलती है।

छ-1-क-1 रेखा ग्राम धमनीकला के प्लाट संख्या 136, 134, 133, 132 के दक्षिणी सीमा के साथ-साथ जाती है और प्लाट संख्या 107, 106 से होकर ग्राम कन्दोहा में प्रवेश करती है और प्लाट संख्या 402, 403, 388/2, 387, 339, 381, 382, 377, 376, 375, 374, 373, 348/2, 351, 348/1 से होती हुई आरंभिक बिन्दु “क-1” पर मिलती है।

[फा. सं. 43015/13/2010-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

MINISTRY OF COAL

New Delhi, the 23rd February, 2012

S.O. 808.—Whereas, by the notification of the Government of India in the Ministry of Coal number S.O. 2555, dated 8th October, 2010, issued under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated 16th October, 2010, the Central Government gave notice of its intention to prospect for coal in 328.056 hectares (approximately) or 810.63 acres (approximately) of the lands in the locality specified in the Schedule annexed to that notification;

And, whereas the Central Government is satisfied that coal is obtainable in a part of the said lands prescribed in the Schedule appended to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 327.862 hectares (approximately) or 810.14 acres (approximately) as Surface Rights in or over the said lands described in the schedule appended hereto:

Note 1 : The plan bearing number SECL/BSP/CGM(PLG)/LAND/412, dated the 26th September, 2011 of the area covered by this notification may be inspected in the Office of the Collector, Shahdol (Madhya Pradesh) or in the Office of the Coal Controller, 1, Council House Street, Kolkata -700001 or in the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

Note 2: Attention is hereby invited to the provisions of Section 8 of the said Act which provides as follows:—

Objection to acquisition:

“8(1) Any person interested in any land in respect of which a notification under Section 7(1) has been issued, may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or any rights in or over such land.

Explanation,—

(1) It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operation in the land for the production of coal and that such operation should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either makes a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.”

Note 3: The Coal Controller, 1, Council House Street, Kolkata -700001, has been appointed by the Central Government as the competent authority under Section 3 of the said Act, vide notification number S.O. 905, dated the 20th March, 1987, published in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 4th April, 1987.

SCHEDULE

**Damni Underground Mine Block, Sohagpur Area
District-Shahdol, Madhya Pradesh**

(Plan bearing number SECL/BSP/CGM(PLG)/LAND/412, dated the 26th September, 2011)

(SURFACE RIGHTS :

1. Block-1:

(A) Revenue Land:

Sl. No.	Name of Village	Patwari Halka Number	Bandobast Number	Tahsil	District	Area in hectares	Remarks
1.	Khairaha	93	203	Sohagpur	Shahdol	82.395	Part
2.	Kandoha	93	67	Sohagpur	Shahdol	28.365	Part

Total : 110.760 hectares (approximately) or 273.69 acres (approximately)

(B) Revenue Forest Land:

Sl. No.	Name of Village	Patwari Halka Number	Bandobast Number	Tahsil	District	Area in hectares	Remarks
1.	Khairaha	93	203	Sohagpur	Shahdol	0.182	Part

Total : 0.182 hectares (approximately) or 0.45 acres (approximately)

Sub Total : 110.942 hectares (approximately)

or 274.14 acres (approximately)

2. Block-2:**(A) Revenue Land:**

Sl. No.	Name of Village	Patwari Halka Number	Bandobast Number	Tahsil	District	Area in hectares	Remarks
1.	Kandoha	93	67	Sohagpur	Shahdol	184.145	Part
2.	Dhamnikala	95	469	Sohagpur	Shahdol	8.015	Part
3.	Dhamnikhurd	95	468	Sohagpur	Shahdol	8.448	Part
Total : 200.608 hectares (approximately) or 495.70 acres (approximately)							

(B) Revenue Forest Land:

Sl. No.	Name of Village	Patwari Halka Number	Bandobast Number	Tahsil	District	Area in hectares	Remarks
1.	Kandoha	93	67	Sohagpur	Shahdol	12.901	Part
2.	Dhamnikhurd	95	468	Sohagpur	Shahdol	3.411	Part
Total : 16.312 hectares (approximately) or 40.30 acres (approximately)							

Sub Total : 216.920 hectares (approximately)
or 536.00 acres (approximately)

Total Revenue land :— 110.760 + 200.608 = 311.368 hectares (approximatley)
or 769.39 acres (approximately)

Total Revenue Forest land :— 0.182 + 16.312 = 16.494 hectares (approximatley)
or 40.75 acres (approximatley)

Grand Total (Blocks 1+2):-110.942 + 216.920 hectares = 327.862 hectares (approximately)
or 274.14 + 536.00 acres = 810.14 acres (approximately)

1. Plot Numbers to be acquired in village Khairaha (Part): 55(P), 215(P), 216, 217, 240, 241(P), 243(P), 244 to 268, 269(P), 270(P), 271(P), 299(P), 303(P), 304(P), 316 to 326, 327(P), 328 to 339, 340(P), 341(P), 342 to 352, 353(P), 354(P), 355(P), 356(P), 357(P), 398(P), 441 (P), 442, 443(P), 446 to 468, 469(P), 470(P), 472(P), 473(P), 474, 475(P), 476 to 506, 507(P), 508 to 519, 1129, 1130(P).

2. Plot Numbers to be acquired in village Kandoha (Part): 7(P), 8 to 18, 19(P), 20(P), 21 (P), 22, 23, 24(P), 26(P), 27 to 32, 33(P) to 40(P), 41 to 103, 104(P), 105(P), 106, 107(P), 108 to 115, 116(P), 117(P), 118(P), 128(P), 129/1(P), 129/2, 130, 132(P), 133, 143 to 148, 151 to 194, 216(P), 217(P), 218(P), 222(P), 283 to 310, 311(P), 312, 320(P), 324(P), 325 to 331, 334(P), 335 to 347, 348/1, 348/2(P), 349, 350, 351 (P), 373(P) to 377(P), 378 to 380, 381 (P), 382(P), 387(P), 388/1, 388/2(P), 389, 390, 391/3 to 391/8, 391/12 to 391/14, 392(P), 393(P), 394 to 401, 402(P), 403(P), 173/410, 115/411 (P), 348/412.

3. Plot Numbers to be acquired in village Dhamnikala (Part): 106(P), 107(P), 132 to 134, 135/1(P), 135/2, 136(P).

4. Plot Numbers to be acquired in village Dhamnikhurd (Part): 1 to 7, 8(P) to 11 (P), 38(P), 40(P), 4/165.

Boundary Description:**Block-1 :**

A-B Line starts from point ‘A’ in village Khairaha and passes along western boundary of plot number 339, 319, 55 and meets at point ‘B’ on the eastern bank of Sarpha Nullah.

B-C Line passes in village Khairaha through plot number 55, along northern boundary of plot number 317,316,323, through 304, 327, 269, 270, 271, 243, 241, along northern boundary of plot number 240, through 246, along

northern boundary of plot number 217, through 215, 507 and meets at point ‘C’ on the common boundary of villages Khairaha-Kandoha.

- C-D** Line passes in village Kandoha along western boundary of plot number 30, 31, 30, 14, 12, 11, 9, 8, northern boundary of plot number 8, 7, 19 and meets at point ‘D’.
- D-E** Line passes in village Kandoha through plot number 19, 20, 21, 24/1, 24/2, 26, 33, 107, along eastern boundary of plot number 106, through 105, along eastern boundary of plot number 115, through 411, 116, 117, 118, 216, 217, 218, 222, 223, 322 and meets at point “E” on the common boundary of villages Khairaha-Kandoha.
- E-A** Line passes in village Khairaha and passes along southern boundary of plot number 517, 519, 446, through 443, along western boundary of plot number 441, through 470, 469, 472, 473, 475, 398, 1130, 355, 354, 353, 356, 357, 341, 340, along southern boundary of plot number 340, 339 and meets at starting point ‘A’.

Block - 2:

A-1-B-1 Line starts from point ‘A-1’ in village Kandoha and passes along western boundary of plot number 324 and meets at point ‘B-1’ on the eastern bank of Nullah.

B-1-C-1 Line passes in village Kandoha along northern boundary of plot number 324, 329, 330, 331, through 324, 348/2, 334, 320, 311, western boundary of plot number 310, 287, northern boundary of plot number 287, 286, 285, western boundary of plot number 284, 283, 192, 193, 194, 191, 152, 153, southern boundary of plot number 147, 143, 133, through 132, southern boundary of plot number 102, eastern boundary of plot number 130, 129/2, southern boundary of plot number 129/2, 129/1 and meets at point “D-1”.

D-1-E-1 Line passes in village Kandoha through plot number 129/1, 128, 105, 104, 100, 99, 98, 97, 33, 34, 35, 36, 37, 38, 40 and meets at point “E-1” on the southern bank of nullah.

E-1-F-1 Line passes in village Kandoha along northern boundary of plot number 40, 41, 42, 56, 57, 58, 64, 65, eastern boundary of plot number 65, 66, 164/1, 391/3 then along partly common boundary of villages Chhirhiti-Dhamnikhurd and meets at point “F-1”.

F-1-G-1 Line passes in village Dhamnikhurd through plot number 11, 10, 9, 38, 8, 38, 40 then enter in village Kandoha and passes through 393 then enter in village Dhamnikala and passes through plot number 135/1, 136 and meets at point “G-1”.

G-1-A-1 Line passes in village Dhamnikala along southern boundary of plot number 136, 134, 133, 132, through 107, 106 then enter in village Kandoha and passes through 402, 403, 388/2, 387, 339, 381, 382, 377, 376, 375, 374, 373, 348/2, 351, 348/2 and meets at starting point “A-1”.

[F. No. 43015/13/2010-PRIW-I]

A. K. DAS, Under Secy.

नई दिल्ली, 24 फरवरी, 2012

का.आ. 809.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में वर्णित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है ;

उक्त अनुसूची में वर्णित भूमि के अन्तर्गत आने वाले क्षेत्र के ब्यारे रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/416, तारीख 4 नवम्बर, 2011 का निरीक्षण, कलेक्टर, शहडोल (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आश्य की सूचना देती है ;

उक्त अनुसूची में विहित भूमि में हितबद्ध कोई व्यक्ति, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के समक्ष—

- (i) संपूर्ण भूमि या उसके किसी भाग के अर्जन या ऐसी भूमि में या उस पर के किन्हीं अधिकारों के प्रति पर आक्षेप कर सकेगा; या
- (ii) भूमि में के प्रतिकर में किसी हित का या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का दावा कर सकेगा; या
- (iii) प्रभावहीन हो गई पूर्वेक्षण अनुज्ञप्तियों, खनन पट्टों के अधीन अर्जित किये जाने पर अधिकारों के लिये प्रतिकर की मांग कर सकेगा और उक्त अधिनियम की धारा 13 की उप-धारा (7) में विनिर्दिष्ट भूमि के कोरों से संग्रहण या अन्य खनिज नमूनों तथा उनके सम्यक् विश्लेषण को तथा किसी अन्य सुसंगत अभिलेख या सामग्रियों की निर्मिति से संबंधित सभी मानचित्र, चार्ट और अन्य दस्तावेज परिदृश्य कर सकेगा।

अनुसूची

सिंहपुर ब्लाक, सोहागपुर क्षेत्र,
जिला-शहडोल, मध्य प्रदेश

(रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/416, तारीख 4 नवम्बर, 2011)

क्र.सं.	ग्राम का नाम	पटवारी हल्का संख्या	तहसील का नाम	जिला का नाम	क्षेत्रफल हेक्टर में	टिप्पणियां
1.	सिंहपुर	91	सोहागपुर	शहडोल	1377.903	संपूर्ण
2.	पडमनिया खुर्द	93	सोहागपुर	शहडोल	328.238	संपूर्ण
3.	ऐन्ताझर	92	सोहागपुर	शहडोल	565.391	संपूर्ण
4.	जोधपुर	90	सोहागपुर	शहडोल	791.794	संपूर्ण
5.	नगमला	96	सोहागपुर	शहडोल	182.714	भाग
6.	उरहा	88	सोहागपुर	शहडोल	95.000	भाग
7.	दूधी	89	सोहागपुर	शहडोल	589.977	संपूर्ण
8.	पडरिया	151	सोहागपुर	शहडोल	395.010	संपूर्ण
9.	पडमनिया कला	94	सोहागपुर	शहडोल	295.422	भाग
10.	नरगी	95	सोहागपुर	शहडोल	389.582	संपूर्ण
11.	मिठौरी	97	सोहागपुर	शहडोल	125.000	भाग

कुल : 5136.031 हेक्टर (लगभग)

या 12691.13 एकड़ (लगभग)

सीमा वर्णन :

- क-ख** रेखा ग्राम जोधपुर-अंतरा के सम्मिलित सीमा में बिन्दु 'क' से आरंभ होती है और ग्राम जोधपुर के पश्चिमी सीमा, ग्राम दूधी के पश्चिमी और उत्तरी सीमा से गुजरती हुई बिन्दु 'ख' पर मिलती है।
- ख-ग** रेखा ग्राम उरहा के भागतः पश्चिमी सीमा एवं ग्राम उरहा और परमनियाकला के मध्य भाग से गुजरती हुई ग्राम नरगी के उत्तरी सीमा से होती हुई बिन्दु 'ग' पर मिलती है।
- ग-घ** रेखा ग्राम नरगी, पडरिया के पूर्वी सीमा और ग्राम नगमला के भागतः पूर्वी सीमा से होती हुई बिन्दु 'घ' पर मिलती है।
- घ-क** रेखा ग्राम नगमला के मध्य भाग और ग्राम सिंहपुर के भागतः दक्षिणी सीमा, ग्राम मिठौरी के उत्तरी भाग, ग्राम जोधपुर के दक्षिणी सीमा से होती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा. सं. 43015/18/2011-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

New Delhi, the 24th February, 2012

S.O. 809.—Whereas it appears to the Central Government that Coal is likely to be obtained from the lands in the locality described in the Schedule annexed hereto;

And whereas, the plan bearing number SECL/BSP/ GM (PLG)/ LAND/ 416, dated the 4th November, 2011 containing details of the area of land described in the said Schedule may be inspected at the office of the Collector, Shahdol (Madhya Pradesh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh);

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule;

Any person interested in the land described in the said Schedule, may—

- (i) object to the acquisition of the whole or any part of the land, or of any rights in or over such land; or
- (ii) claim an interest in compensation if the land or any rights in or over such land; or
- (iii) seek compensation for prospecting licences ceasing to have effect, rights under mining lease being acquired, and deliver all maps, charts and other documents relating to the land, collection from the land of cores or other mineral samples and due analysis thereof and the preparation of any other relevant record or materials referred to in sub-section (7) of Section 13 of the said Act,

to the Officer-In-Charge or Head of the Department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495006 (Chhattishgarh) within a period of ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Singhpur Block, Sohagpur Area, District-Shahdol, Madhya Pradesh.

(Plan bearing number SECLBSP/GM (PLG)/LAND/ 416, dated the 4th November, 2011)

S1. No.	Name of Village	Patwari Halka Number	Name of Tahsil	Name of District	Area (in hectares)	Remarks
1.	Singhpur	91	Sohagpur	Shahdol	1377.903	Full
2.	Parmaniya Khurd	93	Sohagpur	Shahdol	328.238	Full
3.	Aintajhar	92	Sohagpur	Shahdol	565.391	Full
4.	Jodhpur	90	Sohagpur	Shahdol	791.794	Full
5.	Nagmala	96	Sohagpur	Shahdol.	182.714	Part
6.	Uraha	88	Sohagpur	Shahdol	95.000	Part
7.	Dudhi	89	Sohagpur	Shahdol	589.977	Full
8.	Padariya	151	Sohagpur	Shahdol	395.010	Full
9.	Parmaniya Kala	94	Sohagpur	Shahdol	295.422	Part
10.	Nargi	95	Sohagpur	Shahdol	389.582	Full
11.	Mithaori	97	Sohagpur	Shahdol	125.000	Part

Total : 5136.031 hectares (approximately)

or 12691.13 acres (approximately)

BOUNDARY DESCRIPTION

- A-B** Line starts from point “A” on the common boundary of villages Jodhpur-Antara and passes along western boundary of village Jodhpur, western and northern boundary of village Dudhi and meets at point ‘B’ on the same boundary.
- B-C** Line passes along partly western boundary of village Uraha, through middle part of village Uraha, Parmania Kala, along northern boundary of village Nargi and meets at point “C”.
- C-D** Line passes along eastern boundary of village Nargi, Padaria, partly eastern boundary of village Nagmala and meets at point “D”.
- D-A** Line passes through middle part of village Nagmala, along partly southern boundary of village Singhpur, through northern part of village Mithaori, along southern boundary of village Jodhpur and meets at starting point “A”.

[F. No. 43015/18/2011-PRIW-I]

A. K. DAS, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 24 फरवरी, 2012

का.आ. 810.—भारत सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में मैसर्स गेल (इंडिया) लिमिटेड द्वारा पाइपलाइन बिछाने के लिये उक्त अधिनियम के अधीन संलग्न सूची के कालम (1) में वर्णित व्यक्ति को कालम (2) में वर्णित क्षेत्र में सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त करती है।

अनुसूची

व्यक्ति का नाम और पता	अधिकारिता का क्षेत्र
श्रीमती मीनाक्षी सिंह, संयुक्त कलेक्टर, मैसर्स गेल (इंडिया) लिमिटेड में प्रतिनियुक्त पर	सम्पूर्ण राजस्थान राज्य

[फा. सं. एल-14014/4/12-जी.पी.]

ए. गोस्वामी, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 24th February, 2012

S.O. 810.—Whereas, in pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Government of India hereby authorizes the person mentioned in column (1) of the schedule given below to perform the functions of the Competent Authority under the said Act for laying pipelines by the said M/s. Gail (India) Limited in the Area mentioned in column (2) of the said schedule.

SCHEDULE

Name and Address of the Person	Area of Jurisdiction
Shrimati Meenakshi Singh, Joint Collector. On deputation basis to M/s. GAIL (India) Limited,	Whole State of Rajasthan

[F. No. L-14014/4/12-GP.]

A. GOSWAMI, Under Secy.

श्रम और रोज़गार मंत्रालय

नई दिल्ली, 18 जनवरी, 2012

का०आ० 811.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक्सक्टिव इन्जीनियर, पर्यावरन अवाम बिहू अरजन पराखण्ड राजघाट ललितपुर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 31/ 2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 18-01-2012 को प्राप्त हुआ था

[सं० एल-42012/267/2010-आई आर (डी यू)]
जौहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th January, 2012

S.O. 811.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 31/2011**) of the Central Government Industrial Tribunal-cum-Labour Court **Kanpur** as shown in the Annexure, in the Industrial Dispute between the **Executive Engineer, Paryavaran Avam Bhu Arjan Prakhand, Rajgat, Lalitpur and their workman**, which was received by the Central Government on 18.01.2012.

[No. L-42012/267/2010-IR(DU)]
JOHAN TOPNO, Under Secretary

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, KANPUR

Industrial Dispute No. 31 of 2011

Sri Rama Kant Malviya
S/o Sri Babu Lal Malviya
R/o Village Buncha, Post Dailwara,
Lalitpur.

And

The Executive Engineer,
Paryavaran Avam Bhu Arjan Prakhand,
Rajghat,
Lalitpur.

AWARD

1. Central Government, Mol, New Delhi vide notification L-42012/267/2010/IR(UD) dated 10.05.11 has reference the following dispute for adjudication to this tribunal.

2. Whether the action of Ardh Bandh Prakhand and Paryavaran avam Bhu Arjan Prakhand Rajghat Lalitpur in

terminating the service of Sri Ramakant Malviya son of Sri Babu Lal Malviya with effect from 20.10.81 is legal and justified? What relief the workman is entitled to?

3. In the instant case after receipt of reference from the Ministry registered notices were sent to the parties to file their statement of claim and counter claim. But the registered notices so sent at the address of the workman were not received in the office of the tribunal therefore it will be presumed that the notices were duly served on the workman, still he failed either to make his presence before the tribunal or to file his claim before the tribunal.

4. Therefore, in the given circumstances, the tribunal is bound to believe that the workman is least interested in prosecuting his case. As such the tribunal is not having any option but to award relief against the workman holding that he is not entitled to any relief pursuant to the present reference order.

5. Reference is therefore answered against the workman and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 31 जनवरी, 2012

का०आ० 812.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मनेजमेन्ट आफ कोल डाम हाइड्रो इलैक्ट्रिक पावर प्रोजेक्ट एण्ड अर्देस प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 182,183,184,190,194/2K 11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-01-2012 को प्राप्त हुआ था।

[फा० सं० एल-42012/268,297,298,272,295/2010 आई आर (डी यू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 31st January, 2012

S.O. 812.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (**14 of 1947**), the Central Government hereby publishes the Award (**Ref. No. 182,183,184,190,194/2K11**) of the Central Government Industrial Tribunal-cum-Labour Court No. II Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of KOI Dam Hydro Electric Power Project & Others and their workman, which was received by the Central Government on 31.01.2012.

[No. L-42012/268,297,298,272,295/2010-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II CHANDIGARH**

Present: Sri A.K. Rastogi, Presiding Officer.

1. Case No. ID No. 182/2011

Registered on 8.6.2011

Sh. Kuldeep Kumar, S/O Sh. Ranjeet Singh, Village and PO Dhar Tatoh, Tehsil Sadar, Bilaspur.

2. ID No. 183/2011

Registered on 8.6.2011

Sh. Surjeet Singh, S/O Sh. Joginder Singh, Village Vijaypur, PO Samoh, Tehsil Jhandutta, Bilaspur.

3. ID No. 184/2011

Registered on 8.6.2011

Sh. Amarjeet Kumar, S/O Sh. Ram Swaroop, Village and PO Ghanouli, Tehsil and Distt. Ropar (PB).

4. ID No. 190/2011

Registered on 8.6.2011

Sh. Mahesh Kumar, S/O Sh. Chaman Lal, Village and PO Jhakhera, Tehsil Una, Una (HP).

5. ID No. 194/2011

Registered on 8.6.2011

Sh. Jai Singh, S/o Sh. Phinu Ram, Village Durgrian PO Kanaid, Tehsil Sundernagar, Mandi (HP).

APPLICANTS

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project NTPC, VPO Barmana, Bilaspur.

2. Project Manager, Italian Thai Development Co. Ltd. Kol Dam Hydro Electric Power Project Village Kayan, PO Slapper, Teh. Sundernagar, Mandi

3. M/s U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur.

RESPONDENTS

For the workman : None

For the Management : Sh. VP Singh for respondent No. 1, Sh. Shamsher Singh for respondent No. 2

AWARD**PASSED ON JAN 06. 2012**

The Central Government vide Notification No. L-42012/268/2010 IR(UD) dated 6.5.2011, No. L-42012/297/2010 IR(UD) dated 5.5.2011, No. L-42012/298/2010 IR(UD) dated 5.5.2011, No. L-42012/272/2010 IR(UD) dated 6.5.2011 and No. L-42012/295/2010 IR(UD) dated 9.5.2011, by exercising its power under Section 10 Sub-Section 1 Clause (d) and Sub-Section (2A) of the Industrial Disputes Act 1947 (in Short Act) has referred the following disputes for adjudication to this Tribunal.

1. ID No. 182/2011

"Whether retrenchment of services of Sh. Kuldeep Kumar S/o Ranjeet Singh w.e.f 14.8.2008 by M/s U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub-contractor of M/s Italian Thai Development Public Limited, a contractor of M/s NTPC Limited without following the principle of 'last come first go' is legal and justified? What relief the workman is entitled to?"

2. ID No. 183/2011

"Whether retrenchment of services of Sh. Surjeet Singh, S/o Sh. Joginder Singh, w.e.f 3.9.2008 by the management M/s U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub-contractor of M/s Italian Thai Development Public Limited, a contractor of M/s NTPC Limited without following the principle of 'last come first go' is legal and justified? What relief the workman is entitled to from the above employer?"

3. ID No. 184/2011

"Whether retrenchment of services of Sh. Amarjeet Kumar, S/o Sh. Ram Swaroop w.e.f 3.9.2008 by M/s U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub-contractor of M/s Italian Thai Development Public Limited, a contractor of M/s NTPC Limited without following the principle of 'last come first go' is legal and justified? What relief the workman is entitled to from the above employer?"

4. ID No. 190/2011

"Whether retrenchment of services of Sh. Mahesh Kumar, S/o Sh. Chaman Lal w.e.f 14.8.2008 by M/s U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub-contractor of M/s Italian Thai Development Public Limited, a contractor of M/s NTPC Limited without following the principle of 'last come first go' is legal and justified? What relief the workman is entitled to?"

5. ID No. 194/2011

"Whether retrenchment of services of Sh. Jai Singh, S/o Sh. Phinu Ram w.e.f 3.9.2008 by the management of M/s U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub-contractor of M/s Italian Thai Development Public Limited, a contractor of M/s NTPC Limited without following the principle of 'last come first go' is legal and justified? What relief the workman is entitled to from the above employer?"

After receiving the references notices were issued to the parties. Respondent No.1 and 2 put in their appearances but workmen did not turn up and file claim statement despite notice sent to them by registered post on 11.11.2011. Service was presumed on the workmen. They failed to file claim statement despite sufficient service of notices. Hence a 'No Dispute' award is passed in all the five IDs viz ID No. 182,183,184, 190 and 194 of 2011. Original copy of the Award be placed on the record of ID No. 182 of 2011 and a copy of the award be placed on the record of ID No. 183,184 190 and 194 of the 2011 each. Two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 31 जनवरी, 2012

का०आ०. 813.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मनेजमेन्ट आफ कोल डाम हाइड्रो इलैक्ट्रिक पावर प्रोजेक्ट एण्ड अर्द्दस प्रबंध तत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 181,186/2K 11) को प्रकाशित करती है जो केन्द्रीय सरकार को 31-01-2012 को प्राप्त हुआ था।

[फा० सं० एल-42012/263 और 264/2010-आई आर (डीयू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 31st January, 2012

S.O..813.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (**14 of 1947**), the Central Government hereby publishes the Award (**Ref. No. 181, 186/2K11**) of the Central Government Industrial Tribunal-cum-Labour Court No. II **Chandigarh** as shown in the Annexure in the Industrial Dispute between the employers in relation to the **management of KOI Dam Hydro Electric Power Project & Others and their workman**, which was received by the Central Government on **31.01.2012**.

[No. L-42012/263 & 264/2010-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,**

Chandigarh.

Present: Shri A.K. Rastogi, Presiding Officer.

1. Case No. ID No. 181/2011

Registered on 8.6.2011.

Sh. Mast Ram, S/o Sh. Khazana Ram, Village Chhattar, PO Dhawa, Tehsil Sunder Nagar, Mandi (HP).

2. ID No. 186/2011

Registered on 8.6.2011.

Sh. Garja Ra, S/o Sh. Paras Ram, Village Ropa, PO Seri Kothi, Tehsil Sunderagar, Mandi (HP).

Applicants

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.

2. The Managing Director, M/s AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla.

3. Project Manager, Italian Thai Development Co. Ltd. Kol Dam Hydra Electric Power Porject, Village Kayan, PO Slapper, Teh Sunder Nagar, Mandi.

Respondents

APPEARANCES

For the workman	- None
For the Management	- Shri VP Singh for respondent No. 1, Sh. Shamsher Singh for respondent No. 3

AWARD**PASSED ON JAN. 06, 2012**

The Central Government *vide* Notification No. L-42012/263/2010 [(IR(DU)] dated 11.5.2011 and No. L-42012/264/2010 IR(DU) dated 6.5.2011 by exercising its power under Section 10 Sub-Section 1 Clause (d) and Sub-Section (2A) of the Industrial Disputes Act 1947 (in short Act) has referred the following dispute for adjudication to this Tribunal.

ID No. 181/2011

"Whether the action of M/s AKS Engineers and Contractors working on behalf of M/s Italian Thai Development Public Company Limited, who are the Project Managers for the Principal Employer, *viz.*; National Thermal Power Corporation Limited in terminating the services of Sh. Mast Ram S/o Sh. Khazana Ram, Chhater, Sundernagar, Mandi (HP) on the grounds of alleged misconduct *vide* letter dated 13.9.2008, is legal and justified? What relief the workman is entitled to from the above employer?"

ID No. 186/2011

"Whether the action of the management of M/s AKS Engineers and Contractors in terminating the service of Sh. Garja Ram, S/o Sh. Paras Ram, Ropa, Sundernagar *vide* order dated 10.10.2008 is legal and justified? What relief the workman is entitled to?"

After receiving the references the notices were issued to the parties. Respondent No. 1 and 3 put in their appearances. Workman did not turn up and file statement despite notice sent by registered post on 11.11.2011. Notices not received back undelivered. Hence service was presumed on them. As the workmen failed to appear and the file claim statement a 'No Dispute' award is passed in both the cases *viz.* in ID No. 181 of 2011 and ID No. 186 of 2011. A copy of the Award be placed on the record of ID No. 186 of 2001 and original Award will remain on the record of ID No. 181 of 2011. Two copies of the Award be sent to Central Government for further necessary action.

A.K. Rastogi, Presiding Officer

नई दिल्ली, 31 जनवरी, 2012

का०आ०. 814.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मनेजमेन्ट आफ कोल डाम हाइड्रो इलैक्ट्रिक पावर प्रोजेक्ट एण्ड अदर्स प्रबंध तंत्र के संबद्ध नियोजकों और कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट संदर्भ संख्या - 188/2K11—को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-01-2012 प्राप्त हुआ था।

[फाँसं एल-42012/258/2010-आई आर (डी यू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 31st January, 2012

S.O. 814.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (**14 of 1947**), the Central Government hereby publishes the award (Ref. No. **188/2K11**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **Chandigarh** as shows in the Annexure,

in the Industrial dispute between the employers in relation to the **management of KOI Dam Hydro Electric Power Project & Others and their workman**, which was received by the Central Government on 31.01.2012.

[FNo. L-42012/258/2010-IR(DU)]

Ramesh Singh, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.****PRESENT:**

Sri A.K. Rastogi, Presiding Officer.

Case No. ID No. 188/2011

Registered on 8.6.2011.

Sh. Krishan Singh, S/o Prabhu Dayal Singh, Village Pung, PO and Tehsil Sunder Nagar, Mandi (HP).

Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC VPO Barmana, Bilaspur.

2. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh, Sundernagar, Mandi.

3. The Project Manager, M/s ITD Cementation India Ltd., Kol Dam Hydro Electric Power Project, Village Kayan, PO Slapper, Tehsil. Sundernagar. Mandi (HP).

Respondents

APPEARANCES

For the workman

- None

For the Management

- Sh. VP Singh for respondent

No. 1, Shamsher Singh for respondent No. 2

AWARD**PASSED ON JAN. 06, 2012**

The Central Government vide Notification No. L.-42012/258/2010 [IR(DU)] dated 6.5.2011 by exercising its power under Section 10 Sub-section 1 Clause (d) and Sub-Section (2A) of the Industrial Disputes Act 1947 (in short Act) has referred the following dispute for adjudication to this Tribunal.

"Whether retrenchment of services of Sh. Krishan Singh S/o Sh. Prabhu Dayal Singh, Pung, Sundernagar by the Project Manager, M/s ITD

Cementation India Ltd., Kyan Sundernagar *vide* order dated 29/12/2007 without following principle of 'last come first go' is legal and justified? What relief the workman is entitled to?"

After receiving the reference notices were issued to the parties. The workman failed to appear and file claim statement despite notices sent by registered post on 11.11.2011. Notices were not received back undelivered. Hence service is presumed on him. As the workman failed to appear and file claim statement despite notices sent to him by registered post hence a 'No Dispute' award is passed in the case. Two copies of the Award be sent to Central Government for futher necessary action.

A.K. Rastogi Presiding Officer

नई दिल्ली, 1 फरवरी, 2012

का०आ०. 815.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्द्रा गांधी नेशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली, के पंचाट (संदर्भ संख्या - 14/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/02/2012 प्राप्त हुआ था।

[फा० सं० एल 42012/104/2009-आई आर (डी यू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 815.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 14/2010**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **New Delhi** as showin in the Annexure, in the Idnsutrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on **01.02.2012**.

[FNo. L-42012/104/2009-IR(DU)]
Ramesh Singh, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKAROOOMA COURTS COMPLEX: DELHI

I.D. NO. 14/2010

Shri Munna Lal S/o Shri Pyare Lal
H.No. 353, Prajapat Mohalla,
Vill. Maidan Garhi,
New Delhi-63.

CLAIMANT

Versus

The Vice Chancellor,
Indira Ganhni National Open University,
R.No. 1, Block No. 8, Maidan Garhi,
New Delhi-110068.

Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are outsourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt..) Ltd. (In Short the New Contractor) Initially the New Contractor decided to retain services of the sweepers and clearners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and clearners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, working its powers

under clause (d) of sub-section (1) of section 10 of the Act, *vide* order No. L-42012/104/2009-IR(DU) New Delhi dated 28th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Shri Munna Lal w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Shri Munna Lal claims in his claim statement that he was working with the University as "Safai Karamchari" in its housekeeping department since 1.3.1994. He had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, he was asked to fill in certain forms, which forms duly filled and signed by him are in the custody of the University. No appointment letter was issued in his favour, inspite of his request in that behalf. Since inception of his engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning his service conditions. At times he, alongwith his colleagues, was kept at its rolls by the University, while during intermittent spells his services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount his continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from his wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from him but no compensatory leave or overtime wages were given to him. He used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place his services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to him. To his utter surprise a contractor surfaced on scene and told him and his colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and his colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered

to him and his colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to him. His services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. He claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, *vide* agreement dated 01.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly

or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployed of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and his other colleagues. The claimant and his colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim junction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in his claim statement. It is pleaded that the claimant knew his status, being an employee of the Contractor. His services were terminated by the Contractor and the University has no role to play in so called termination of his services. His claim against the University is illegal, unwarranted and unjustified. It is pleaded that his claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?
2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?
3. As in terms of reference.
4. Relief.

14. To discharge onus resting on him, the claimant examined himself and closed his evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advance arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein he swore that he was in the employment of the University as "Safai Karamchari" since 1.3.1994. It has been projected in Ex. WW1/A that he rendered more than 11 years service with the University. Except his new fact, other facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as Ex. WW1/M1. He candidly admitted his signatures on documents Ex. WW1/M2 to Ex. WW1/M8.

17. Smt. Bimla Madan unfolds that Regional Office of the Employers' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2132 was given to Shri Munna Lal, the employee of the above company. Name of Munna Lal appears in statements of contributions Ex. WW1/1 and Ex. WW1/2, filed by his employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgement dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex. WW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgement Ex. WW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex. WW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to him. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when he was not engaged by the New Contractor, he alongwith his colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit

and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, he had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex. MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed that he was in the service of the University since 1.3.1994. Self-serving words, deposited by the claimant, could not withstand rigors of cross-examination, wherein he admitted that Ex. WW1/M2, Ex. WW1/M3, Ex. WW1/M4, Ex. WW1/M5, Ex. WW1/M6, Ex. WW1/M7 and Ex. WW1/M8 bear his signatures. When perused it came to light that Ex. WW1/M4 to Ex. WW1/M8 are wage-sheets of the Contractor, though which salary of the claimant and his colleagues were released by the former in their favour. These documents project him to be an employee of the Contractor. Thus by an admission of his signatures on above documents he allowed a fact to spill over, which demolishes his case of being an employee of the University. Ex. WW1/M2 is also photocopy of scrolls through which payments were released by the Contractor to the claimant and his colleagues. In the end he gave in and deposed that he was not aware as to who engaged him. However he made a faint attempt to project his cause when he asserted that he used to work for the University. Conspectus of above facts spill the beans and announce him to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced *vide* agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, *vide* agreement Ex. MW3/2. When New Contractor did not engage the services of the claimant and his colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8, Ex. MW3/9 and Ex. MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18 and Ex. MW3/19, Dr. Bisht detailed. Payments

were made to the Contractor through cheques, which were honoured and cleared and letter Ex. MW3/21 was written by the bank in that regard. He had proved list of contractors as Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to him. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex. MW3/21. Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of his salaries to him. It was the Contractor who was his pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition), Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2007 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but pertain instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under

sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgement in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) 11J. 233), which was referred with approval in Steel Authority of India.

27. In *Shivnandan Sharma* (1955 (1) LLJ 688), the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On Construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In *Hussainbhai* (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact the employer. He has economic control over the worker's subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is

total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In *Steel Authority of India* (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in *Hussainbhai*'s case (*supra*) and in *Indian Petrochemicals Corporation* case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its

registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis ".....the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11 Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done

in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside. ***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government. Therefore, with effect from February 20, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

34. In Gujarat Electricity Board [1995] (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be opposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour

under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujarat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under Section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been addled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules *viz.*, written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention of contract. No court or tribunal will lend its aid to a man who finds his cause of

action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1) (c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the movement it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and his colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The Policy behind and concept of collective bargaining is to protect workmen as class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and his colleagues

to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex.MW3/1. Contents of clause 24 of Ex.MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and his colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex.MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex.MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex.MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex.MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration: "When at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligation, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex.MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex.MW3/1 . It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex.MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex.MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought or record to the effect as to what payments were made to the contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex.WW1/M4 to Ex.WW1/M9 project total work days of the respective months for which the claimant worked, besides the number of days on which he remained on leave without pay. These documents project minimum rates of wages paid to him in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bill raised by the Contractor and sanction accorded by the University are proved as Ex.MW3/11 to Ex.MW3/19. Cheques issued in favour of the Contractor are proved as Ex.MW3/5 to Ex.MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex.MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao [1958(II)LLJ252] the Apex Court ruled that the concept of employment involves three ingredients: (1) employer (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985(ii)LLJ4] Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited [1957(1)LLJ477], the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and

supervision test was reaffirmed by the Appex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje [1962(1)LLJ 119], the Apex Court clarified that "control of the management, which is necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao [1970(11)LLJ 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House [1973 (11) LLJ 495] the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age."

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decessive factor, but it would be wrong to say that in every case it is a decessive factor. In Shining Tailors [1983 (11) LLJ 143], the Apex Court held that the prices rated workers working for a big tailoring establishment were workman for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workman for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a

given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or other of their own were held to be independent contractors, in K. Keswa Reddiar [1957 (1) LLJ 645] in the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968(1)LLJ 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab.I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990(1)LLJ 50].

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex.MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required of the University."

53. As projected above clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clause, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling him in respect of manner of doing the work. Power of the Contractor to replace the claimant from his work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change him, if not, consented by the University. If the University decided to get him changed, for any reasons whatsoever, the Contractor could not impose him on the former, no matter his work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex. MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and his other 69 colleagues. Who used to the mark attendance of the claimant and his colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised his work. Vacuum of facts in

Ex. MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and his colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behavior or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and his associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex. MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex. MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and his other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex. MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and his colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and his colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgment dated 13.3.2009 has been proved as Ex. MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and his colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exemptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that he rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgement Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor his colleagues were part to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgement ex MW2/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgement, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhan Chosal (AIR 1960 S.C. 841) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that one a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law-has been

decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again."

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue in subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) issue of act; (ii) Issue of law; and (iii) Mixed issues of law and facts. A decision on an issue of fact, however erroneous it, may be, constitutes res judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad (1970 (1) SCC 613). A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court competent to try subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought." In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been—(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In Industrial jurisdiction principles analogous of res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in Premier Automobiles Ltd. (1975 (II) L5. 445), wherein following principles were enunciated:

- "(I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In Rajasthan State Road Transport Corporation (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(K) and section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly-i.e., without the requirement of a reference by the Government-in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and re binding both upon the employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated therein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revision applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

Same view was taken by the Apex Court in Steel Authority of India (Supra).

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of subsection (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1 referred in para 64 do not come into play. Therefore, judgement Ex.MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating his claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. (1993 (II) LL 174). As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. His services were disengaged under the grab of award of housekeeping service agreement to the New Contractor. His retrenchment was found to be void ab initio. He, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. He is deemed to be in the service of the University Question comes whetheres he is entitled to full back wages. For an answer in his favour, he was under an obligation to establish that he remained un-employed since the date of his retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that he remained unemployed, since the date of dispensing with his services by the Universty. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty (1957(11) LLJ696). The Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future...in computing the money values of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefit etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would to under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B.Choudhary (1983) Lab. 1.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi. (1989 Lab. I.C. 1887)

69. In Assam Oil Co. Ltd. (1960) (1) (LLJ587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. (1966 (1) LL J 398) the amount of compensation equivalent to two year salary of the

employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy (1970 (1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty (1962 (II) LLJ 483) the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishore (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years' service to the University, when he was illegally retrenched. He had to fight for about four years for redressal of his grievances. The circumstances in which he was retrenched and mass unemployment prevalent in economic field which may come in the way when some one goes for an alternative employment, besides other factors of this case persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer
Dated: 09.12.2011.

नई दिल्ली, 1 फरवरी, 2012

का०आ० 816.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बाइस चांसलर, इंदिरागांधी नेशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या-16/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/02/2012 प्राप्त हुआ था।

[फा० सं० एल-42012/105/2009-आई आर (डी यू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O... 816.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 16/2010**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on 01.02.2012.

[F.No.L-42012/105/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D.No. 16/2010
Smt. Monika W/o Shri Ram Ashish,
H.No. 853, Balmiki Basti,
Maidan Garhi,
New Delhi.

Claimant

Versus

The Vice Chancellor,
Indira Gandhi National Open University,
R.No. 1, Block No. 8, Maidan Garhi,
New Delhi-110068.

Management

AWARD

Indira Gandhi National Open University (hereinafter referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education

programmes. The University functions not only within the borders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are outsourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act.) No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/105/2009-IR(DU) New Delhi dated 28th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Smt. Monika w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Smt. Monika claims in her claim statement that she was working with the University as "Safai Karamchari" in its housekeeping department since October, 2006. She had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, she was asked to fill in certain forms, which forms duly filled and signed by her are in the custody of

the University. No appointment letter was issued in her favour, inspite of her request in that behalf. Since inception of her engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning her service conditions. At times she, alongwith her colleagues, was kept at its rolls by the University, while during intermittent spells her services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount her continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from her wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from her but no compensatory leave or overtime wages were given to her. She used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place her services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to her. To her utter surprise a contractor surfaced on scene and told her and her colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and her colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to her and her colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to her. Her services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. She claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or

other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads and University.

9. To outsource housekeeping services, the University engaged services of the Contractor, vide agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other

obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and her other colleagues. The claimant and her colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in her claim statement. It is pleaded that the claimant knew her status, being an employee of the Contractor. Her services were terminated by the Contractor and the University has no role to play in so called termination of her services. Her claim against the University is illegal, unwarranted and unjustified. It is pleaded that her claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined vide order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?
2. Whether the claimant, was an employee of Sybex Computer System Pvt. Ltd., the Contractor?
3. As in terms of reference.
4. Relief.

14. To discharge onus resting on her, the claimant examined herself and closed her evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advance arguments on behalf of the claimant, Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions of behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein she swore that she was in the employment of the University as "Safai Karamchari" since October 2006. It has been projected in Ex. WW1/A that she rendered more than 240 days service with the University. Except this new fact, other facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as Ex. WW1/M1. She candidly admitted her signatures on documents Ex. WW1/M2 to Ex. WW1/M7.

17. Smt. Bimla Madan unfolds that Regional Office of the Employees' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2950 was given to Smt. Monika, the employee of the above company. Name of Monika appears in statements of contributions Ex. MW1/1 and Ex. MW1/2, filed by her employer for the period 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgement dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex. MW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgement Ex. MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex. MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to her. Services of the Contractor were availed to outsource housekeeping services vide agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when she was not engaged by the New Contractor, she alongwith her colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the contractor, she had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex. MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed

facts which are inconsistent to each other. In her claim statement she projected a case that she was in the service of the University since October 2006. Self-serving words, deposed by the claimant, could not withstand rigors of cross-examination, wherein she admitted that Ex. WW1/M2, Ex. WW1/M3, Ex. WW1/M4, Ex. WW1/M5, Ex. WW1/M6 and Ex. WW1/M7 bear her signatures. When perused it came to light that Ex. WW1/M4 to Ex. WW1/M7 are wage-sheets of the Contractor, though which salary of the claimant and her colleagues were released by the former in their favour. These documents project her to be an employee of the Contractor. Thus by an admission of her signatures on above documents she allowed a fact to spill over, which demolishes her case of being an employee of the University. Ex. WW1/M2 and Ex. WW1/M3 are also photocopy of scrolls through which payments were released by the Contractor to the claimant and her colleagues. In the end she gave in and deposed that she was not aware as to who engaged her. However she made a faint attempt to project her cause when she asserted that she used to work for the University. Conspectus of above facts spill the beans and announce her to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced vide agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, vide agreement EXMW3/2. When New Contractor did not engage the services of the claimant and her colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8, Ex. MW3/9, and Ex. MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18, and Ex. MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and Letter Ex. MW3/21, was written by the bank in that regard. He had proved list of contractors as Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to her. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, In which statements name of the claimant does appear as an

employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex.MW3/21. Sequences of events, brough over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of her salaries to her. It was the Contractor who was her pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,
- (b) whether it is of perennial nature that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation—if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government there shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When

employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in steel Authority of India Ltd. [2001 (7) S.C.C.]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the contract labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"....they fall in three classes : (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact an in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974(3) SSC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgement in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said

precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any give result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 223], which was referred with approval in Steel Authority of India.

27. In Shivnandan Sharma [1995(1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was not direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours of produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the workers is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labours" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workmen will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath [1992 Lab. I.C. 75] the Apex Court considered the question, whether non-compliance of the provisions of section 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by

the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid imphasis "... the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequence specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer of a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, inappropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962(I) LLJ. 131], Shibu Metal Works [1966(I) LLJ. 717], National Iron & Steel Co. [1967(II) LLJ. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1962(I) LLJ. 566], The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of

that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with provision of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act."

34. In Gujarat Electricity Board [1995(5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said

Section. No Court including the industrial adjudicator has jurisdiction to do so.

- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms."

35. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujrat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under Section 10 of the Contract Labour Act, and not with and court including the industrial adjudicator. This Tribunal has been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of Section 10 of the Contract labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht, In construction of contents of Ex. MM3/1, this Tribunal cannot be oblivious of the rule *viz.*, written instrument shall, if possible, be so interpreted "ut res magic valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex. MW3/1 contains clauses which are contra bonos more of forbidden by law? When pursued, clause 24 of Ex. MW3/1 makes it clear that right to form or

join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduce thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form association or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with cause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if association has to be dissolved the movement it has been formed it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and her colleagues.

40. There is other facet of the coin. The Act is legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputants are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and her colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex. MW3/1. Contents of clause 24 of Ex. MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and her colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex. NW3/1, which is not in conformity with the provisions of the Contract Labour

Act. Primary responsibility to pay wages to an employee employed by a contractor rest upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex. MW3/1 is to be discarded, being violative of law.

42. In mercantile transaction stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex. MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex. MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration: "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of Law. Is adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These

propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? for an answer contents of clause 15 of Ex. MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. NW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages what number of contract labours worked in a particular month, on how many days in months a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, whole level the Tribunal in lurch.

47. Wages sheet Ex..WW1/M4 to Ex. WW1/M7 project total work days of the respective months for which the claimant worked, besides the number of days on which she remained on leave without pay. These document project minimum rates of wages paid to her in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bills raised by the Contractor and sanctioned accorded by the University are proved as Ex. MW3/5 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above,

I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacum of evidence in that regard made me to comment that the University could not establish factors in favour of genuiness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao (1958 (II) LLJ 252) the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employes is one who employs, that is, one who engages the services of other persons. The employer is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India (1985 (II) LLJ 4) Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited (1957 (1) LLJ 477), the apex Court ruled that test of "Supervision and control may be taken as the prima facie test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the prima facie test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje (1962 (1) LLJ 119), the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the

person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao (1970 (11) LLJ 59), the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the person employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House (1973 (11) LLJ 495) the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be decessive factor, but it would be wrong to say that in every case it is a decessive factor. In Shining Tailors (1983 (11) LLJ 143), the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those peice rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K. Keswa Reddiar (1957 (1) LLJ 645). In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968 (1) LLJ 500]. An agreement for

selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab.I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990 (1) LLJ 50].

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out the execution of the work. Control test postulates a combination of managerial and technical funtions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex. MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University."

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and

supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling her in respect of manner of doing the work. Power of the Contractor to replace the claimant from her work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claiment he could not do so, in case university showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change her, if not consented by he University. If the University decided to get her changed, for any reasons whatsoever, the Contractor could not impose her on the former, no matter her work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and her other 69 colleagues. Who used to the mark attendance of the claimant and her colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised her work. Vacum of facts in Ex.MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and her colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engraves acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing

improper behavior or to come in conflict with rules of standard of behaviour. Right to coin an act as a improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct".

This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and her associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex. MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex. MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and her other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex. MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and her colleagues. Aforesaid two issues are accordingly answered. Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and her colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex. MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University ? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and her colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained

in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10. 2007, as an employee of the Contractor. Thus it is clear that she rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provision of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgement Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor her colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgement Ex. MW2/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgement, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyana Chosal (AIR 1960 S.C. 941) in following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again."

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To

constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes resjudicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in *Mathura Prashad* [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when subsequent suit was filed. In order that a decision in a former suit may operate as res judicata, the court which decided that suit must have been either—(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction. In industrial jurisdiction principles analogous to re-judicata are applicable.

63. Now it would be considered as to whether the high Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Automobiles Ltd.* [1975 (II) LLI. 445], wherein following principles were enunciated:

- "(I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act."

64. In *Rajasthan State Road Transport Corporation* (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the laws as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either

treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly — i.e., without the requirement of a reference by the Government — in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India (*Supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. An Industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of sub-

section (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1, referred in para 64, do not come into play. Therefore, judgement Ex.MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating her claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. (1993 (II) LLI 174). As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. Her services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. Her retrenchment was found to be void initio. She, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. She is deemed to be in the service of the University. Question comes whether she is entitled to full back wages. For an answer in her favour, she was under an obligation to establish that she remained unemployed since the date of her retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that she remained unemployed, since the date of dispensing with her services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty (1957 (11) LLI 696) the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility or retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exit or of the workman being awarded various benefits including reinstatement under the terms of future awards by

Industrial Tribunal in the event of industrial disputes arising between the parties in future... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Division Bench of the Patna High Court in B. Choudhary (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tebesh Process, Shivakashi (1989 Lab.I.C.1887).

69. In Assam Oil Co. Ltd. (1960 (1) LLI 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. (1966 (1) LLI 398) the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy (1970 (1) LLI (228) compensation equivalent to

two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty (1962 (II) LLI 483) the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari (1986 (II) LLI 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employees. In Yashveer Singh (1993Lab.I.C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor (1984 (II) LLI 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (II) LLI 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous one year service to the University, when she was illegally retrenched. She had to fight for about four years for redressal or her grievances. The circumstances, in which she was retrenched and mass unemployment prevalent in economic field, which may come in the way when some one goes for an alternative employment, besides other factors of this case, persuade me to award 20 per cent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

.नई दिल्ली, 1 फरवरी, 2012

का०आ० 817.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्दिरा गांधी नैशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, दिल्ली के पंचाट (संदर्भ संख्या

15/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 01-02-2012 को प्राप्त हुआ था।

[फा० सं० एल-42012/106/2009-आई आर (डी यू)
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 817.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 15/2010**) of the Central Government Industrial Tribunal cum Labour Court No. I, **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on 01.02.2012.

[FNo. L-42012/106/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 15/2010

Shri Ram Sahai S/o Shri Bhike Lal,
H.No. 204, Gali No. 1,
Dhani Ram Colony,
Vill. Maidan Garhi,
New Delhi-63.

CLAIMANT

Versus

The Vice Chancellor,
Indira Gandhi National Open University,
R.No. 1, Block No. 8, Maidan Garhi,
New Delhi-110068.
Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 offices/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are out-

sourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/106/2009-IR(DU) New Delhi dated 28th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Shri Ram Sahai w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Shri Ram Sahai claims in his claim statement that he was working with the University as "Safai Karamchari" in its housekeeping department since 1.05.1985. He had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, he was asked to fill in certain forms, which forms duly filled and signed by his are in the custody of the University. No appointment letter was issued in his favour, inspite of his request in that behalf. Since inception of his engagement, the University had indulged into his request in that behalf. Since inception of his engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning his service conditions. At times he, alongwith his colleagues, was kept at its rolls by the University, while during intermittent spells his services were transferred at the roll of one contractor or the other. This device was adopted with a new to discount his continuity in service and seniority in employment so that liability to pay retrenchment

compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from his wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from him but no compensatory leave or overtime wages were given to him. He used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place his services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to him. To his utter surprise a contractor surfaced on scene and told him and his colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and his colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and other were terminated. The University called some anti-social elements and got sever beatings administered to him and his colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to him. His services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. He claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outcome housekeeping services, the University engaged services of the Contractor, *vide* agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the

University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and his other colleagues. The claimant and his

colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in his claim statement. It is pleaded that the claimant knew his status, being an employee of the Contractor. His services were terminated by the Contractor and the University has no role to play in so called termination of his services. His claim against the University is illegal, unwarranted and unjustified. It is pleaded that this claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Where there was relationship of employer and employee between the claimant and the management?
2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?
3. As in terms of reference.
4. Relief.

14. To discharge onus resting on him, the claimant examined himself and closed his evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein he swore that he was in the employment of the University as "Safai Karamchari" since 1.05.1985. It has been projected in Ex. WW1/A that he rendered more than 11 years service with the University. Other facts detailed in Ex. WW1/A are fascimile of contents

of claim statement, which has been proved as Ex. WW1/M1. He candidly admitted his signatures on documents Ex. WW1/M2 to Ex. WW1/M7.

17. Smt. Bimla Madan unfolds that Regional Office of the Employers' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2127 was given to Shri Prabhu Dayal, the employee of the above company. Name of Prabhu Dayal appears in statements of contributions Ex. MW1/M1 and Ex. MW1/2, filed by his employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgment dated 13.3.2009 passed by justice Ms. Rekha Sharma. These documents are proved as Ex. MW2/1 to Ex. MW2/5 respectively. He clarified that no appeal was preferred against the judgment Ex. MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex. MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to him.. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when he was engaged by the New Contractor, he alongwith his colleagues resorted to illegal demonstration in the premises of the University. Story of filling civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, he had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex. MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S.Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed that he was in the service of the University since 1.05.1985. Self-serving words, deposited by the claimant, could not withstand rigors of cross-examination, wherein he admitted that Ex. WW1/M2, Ex. WW1/M3, Ex. WW1/M4, Ex. WW1/M5, Ex. WW1/M6 and Ex. WW1/M7 bear his signatures.

When perused it came to light that Ex. WW1/M2, to Ex. WW1/M7 are wage-sheets of the Contractor, though which salary of the claimant and his colleagues were released by the former in their favour. These documents project him to be an employee of the Contractor. Thus by an admission of his signatures on above documents he allowed a fact to spill over, which demolishes his case of being an employee of the University. Ex. WW1/M2 is also photocopy of scrolls through which payments were released by the Contractor to the claimant and his colleagues. In the end he gave in and deposed that he was not aware as to who engaged him. However he made a faint attempt to project his cause when he asserted that he used to work for the University. Conspectus of above facts spill the beans and announce him to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced *vide* agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, *vide* agreement Ex. MW3/2. When New Contractor did not engage the services of the claimant and his colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8, Ex. MW3/9 and Ex. MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18 and Ex. MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex. MW3/21 was written by the bank in that regard. He had proved list of contractors as Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to him. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex. MW3/21. Sequences of events, brought over the record through the depositions of aforesaid witness and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of his salaries to

him. It was the Contractor who was his pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court rule therein that there cannot be automatic absorption of contract labour by

principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under sectin 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these case fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to

conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) LLI. 233) which was referred with approval in Steel Authority of India.

27. In Shivnandan Sharma (1955(1) LLI 688), the respondent Bank entrusted its Cash Department under a contractor to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his workers. When, after some time, the

workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petition and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, the employer. He has economic control over the worker's subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom, alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired

in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbai's case (*supra*) and in Indian Petrochemicals Corporation case (1999 (6) S.C.C. 439) etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In *Dena Nath (1992 Lab. I.C. 75)* the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis ".....the consequence of violation

of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 of and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962 (I) LLJ. 131), Shibu Metal Works (1966 (I) LLJ. 717), National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ. 566). The National Commission on labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to

decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

34. In Gujarat Electricity Board (1995 (5) S.C.C. 27) the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

53. Our conclusions and answers to the questions raised are, therefore, as follows:—

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and

hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the, appropriate Government under Section 10 of the Act.

- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and

Gujrat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed In a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1 this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be so interpreted "ut resimagis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who finds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (I)(c) of Article 19 of the Constitution of India. Guarantee of

right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and his colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of effective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and his colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex. MW3/1. Contents of clause 24 of Ex. MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and his colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex.MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex.MW3/1, is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex.MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex. MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines cosideration: "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise."

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However, consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex.MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider

for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex.WW1/M4 to Ex.WW1/M7 project total work days of the respective months for which the claimant worked, besides the number of days on which he remained on leave without pay. These documents project minimum rates of wages paid to him in a month, out of which deductions towards E.P.F. and E.S.I subscription were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the

claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao (1958 (II) LLJ 252) the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India (1985 (II) LLJ 4) Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them." Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third persons.

49. In Dharangadhara Chemical Works Limited (1957 (I) LLJ 477), the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work in the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them in Shankar Balaji Waje (1962 (I) LLJ 119), the Apex Court clarified that "control of management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao (1970 (11) LLJ 59), the Apex Court, said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract *a priori* test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1)

of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House (1973(11)LLJ 495) the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it would be wrong to say that in every case it is a decisive factor. In Shining Tailors (1983(11)LLJ 143), the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K. Keswa Reddiar (1957(1)LLJ 645). In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar (1968(1)LLJ 500). An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Diary Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab. I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be failing within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank (1990(1)LLJ 50).

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex. MW3/1 ? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14

wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling him in respect of manner of doing the work. Power of the Contractor to replace the claimant from his work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change him, if not consented by the University decided to get him changed, for any reasons whatsoever, the Contractor could not impose him on the former, no matter his work and conduct were satisfactory. Consecutus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and his other 69 colleagues. Who used to mark attendance of the claimant and his colleagues Ex.MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised his work. Vacuum of facts in Ex.MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and his colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engraves acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behaviour or to come in conflict with rules of standard of behaviour. Right to coin an act as improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex.MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right

to declare a code of conduct for the claimant and his associates. That right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex.MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex.MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex.MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex.MW3/1 is sham and bogus. There are realities of relationship of employer and employees between the University and the claimant and his other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex.MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and his colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and his colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgment dated 13.3.2009 has been proved as Ex.MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and his colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (00) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus, it is clear that he rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an

employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the Claimant, in the garb of awarding contract of housekeeping services to the New Contractor is illegal and unjustified.

59. Whether judgment Ex.MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor his colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgment Ex.MW2/5 would not operate as res-judicata in the present controvetsy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Chosal (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again."

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. a decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad (1970(1)SCC613). A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either—(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in Premier Automobiles Ltd. (1975 (ii)LLJ. 445), wherein following principles were enunciated:

- (i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (ii) If the dispute is an industrial dispute arising out of a right or liability under general or common law

and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.

- (iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law and not under the Act."

64. In Rajasthan State Road Transport Corporation (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an industrial dispute" within meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any other rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act 1946—which can be called 'sister enactments' to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly—i.e., without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employees and employers, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claims and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence,

Principle 2, referred in para 63 and Principle 1 referred in para 64 do not come into play. Therefore, judgment Ex. MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating his claim against the University.

66. It is well-settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void *ab initio*. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. (1993 (II) LLJ 174). As detailed above, retrenchment of the claimant is illegal and void *ab initio*. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. His services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. His retrenchment was found to be void *ab initio*. He, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. He is deemed to be in the service of the University. Question comes whether he is entitled to full back wages. For an answer in his favour, he was under an obligation to establish that he remained un-employed since the date of his retrenchment. No evidence has been adduced by the claimant on that point. Thus, it cannot be said that he remained unemployed, since the date of dispensing with his services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty (1957 (11) LLJ 696) the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The Industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including

reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future.... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lb. 1.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age; (iv) Length of service in the establishment; (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

69. In Assam Oil Co. Ltd. (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. (1956 (1) LLJ 398) the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy (1970) (1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty (1962 (II) LLJ 483) the Court

converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongfl dismissal from service. In O.P. Bhandari (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1963 Lab.I.C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellante. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab. I.C. 107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab. I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years' service to the University, when he was illegally retrenched. He had to fight for about four years for redressal of his grievances. The circumstances in which he was retrenched and mass unemployment prevalent in economic field which may come in the way when some one goes for an alternative employment, besides other factors of this case persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated: 09.12.2011

नई दिल्ली, 1 फरवरी, 2012

का०आ० 818.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्ड्रिया गाँधी नैशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में

केन्द्रीय सरकार ओद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 07/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-02-2012 प्राप्त हुआ था।

[फॉ सं एल-12012/92/2009-आई आर (डी यू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 818.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 07/2010**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on **01.02.2012**.

[F.No. L-42012/92/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D. No.7/2010

Smt. Santosh W/o Shri Rajender Kumar
H.No. 129, Balmiki Basti,
Maidan Garhi,
New Delhi.

CLAIMANT

Versus

The Vice Chancellor,
Indira Gandhi National Open University,
R.No. 1, Block No. 8, Maidan Garhi,
New Delhi-110068.
Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is

spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are outsourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitation. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officers was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in Short the Act). No settlement could arrive at between the parties and failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/92/2009-IR (DU) New Delhi dated 7th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Smt. Santosh w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Smt. Santosh claims in her claim statement that she was working with the University as "Safai Karamchari" in its housekeeping department since 1998. She has rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, she was asked to fill in certain forms, which forms duly filled and signed by her are in the custody of the University. No appointment letter was issued in her favour, inspite of her request in that behalf. Since inception of her engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning her service conditions. At times she, alongwith

her colleagues, was kept at its rolls by the University, while during intermittent spells her services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount her continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from her wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from her but no compensatory leave or overtime wages were given to her. She used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place her services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to her. To her utter surprise a contractor surfaced on scene and told her and her colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and her colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University Campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to her and her colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice Retrenchment compensation was also not paid to her. Her services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. She claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No. salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statements is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, *vide* agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor to provide housekeeping services at the campus of the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the

services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and her other colleagues. The claimant and her colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in her claim statement. It is pleaded that the claimant knew her status, being an employee of the Contractor. Her services were terminated by the Contractor and the University has no role to play in so-called termination of her services. Her claim against the University is illegal, unwarranted and unjustified. It is pleaded that her claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?
2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?
3. As in terms of reference.
4. Relief.

14. To discharge onus resting on her, the claimant examined herself and closed her evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1\A was tendered as evidence on behalf of the claimant, wherein she swore that she was in the employment of the University as "Safai Karamchari" since 1998. It has been projected in Ex. WW1\A that she rendered more than 1 years service with the

University. Other facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as WW1/M1. Shri candidly admitted her signatures on documents Ex. WW1/M2 to Ex. WW1/M6.

17. Smt. Bimla Madan unfolds that Regional Office of the Employers' Provident Fund Organisation had given code number as DI-24878 to the Contractor, while code number 2130 was given to Smt. Santosh, the employee of the above company. Name of Santosh appears in statements of contributions Ex. WM1/1 and Ex. MW1/2, filed by her employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgement dated 13.3.2009 passed by justice Ms. Rekha Sharma. These documents are proved as Ex. MW2/1 to Ex. MW2/5 respectively. He clarified that no appeal was preferred against the judgement Ex. MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex. MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to her. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when she was not engaged by the New Contractor, she alongwith her colleagues resorted to illegal demonstration in the premises of the University. Story of filling civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, she had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex. MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed facts which are inconsistent to each other. In her claim statement she projected a case that she was in the service of the University since 1998. In her affidavit Ex. WW1/A she tried to re-affirm those very facts. But during the course of her cross-examination she concedes that in her claim

statement, filed before the Conciliation Officer, she had asserted that she was in the service of the University since 1st May, 2005. This piece of her deposition is contrary to facts pleaded by her in claim statement as Ex. WW2/M1. Her witness does not find any corroboration from any other piece of evidence, direct or circumstantial. Self-serving words, deposited by the claimant, could not withstand rigors of cross-examination, wherein she admitted that Ex. WW1/M2, Ex. WW1/M3, Ex. WW1/M4, Ex. WW1/M5 and Ex. WW1/M6 bear her signature. When perused it came to light that Ex. WW1/M4 to Ex. WW1/M6 are wage-sheets of the Contractor, though which salary of the claimant and her colleagues were released by the former in their favour. These documents project her to be an employee of the Contractor. Thus by an admission of her signatures on above documents she allowed a fact to spill over, which demolishes her case of being an employee of the University. Ex. WW1/M2 and Ex. WW1/M3 are also photocopy of scrolls through which payments were released by the Contractor to the claimant and her colleagues. In the end she gave in and deposed that she was not aware as to who engaged her. However she made a faint attempt to project her cause when she asserted that she used to work for the University. Conspectus of above facts spill the beans and announce her to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced *vide* agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, *vide* agreement Ex. MW3/2. When New Contractor did not engage the services of the claimant and her colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8, Ex. MW3/9 and Ex. MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18 and Ex. MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were made to the contractor through cheques, which were honoured and cleared and letter Ex. MW3/21 was written by the bank in that regard. He had proved list of contractors as Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to her. Smt. Bimla Madan gives re-affirmation to facts

unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex.MW3/W21. Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of her salaries to her. It was the Contractor who was her pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment.
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the Official Gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in Official Gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (2201 (7) S.C.C.I). The Apex Court rules therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"... they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

25. The Court rules that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case (1974 (3) SSC 66), the workman engaged for working in the canteen

run by the Cooperative Society for the appellant were the employees of the appellant mills. In *Basti Sugar Mills* (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court rules that these cases fall in class (3) mentioned above. Judgement in *Hussainbhai* (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see *Standard Vacuum Refining Co. Of India Ltd.* (1960(II) LLJ. 233), which was referred with approval in *Steel Authority of India*.

27. In *Shivnandan Sharma* (1955(1) LL 688), the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before

the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In *Hussainbhai* (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that others is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may very but the inference beflies ingenuity. The

liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms by another. The management's adventitious connections cannot ripen into real employment."

As noted above this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired; (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given/result for the establishment or because he supplies workmen for any work of the establishment, a question might raise whether the contractor is a mere camouflage as in Hussinbai's case (*supra*) and in Indian Petrochemicals Corporation case (1999(6)S.C.C. 439) etc.' if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since she agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employers can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of the Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment

from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24, 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was rules that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis "...the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle or ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible." The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962(I)LLJ.131), Shibu Metal Works (1996(I)LLJ.717) National Iron & Steel Co. (1967 (II) ILJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ, 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11 Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is(i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the

factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done is most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971(2)S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provision of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970 to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be

done by the appropriate Government in accordance with the provisions of the Central Act."

34. In Gujarat Electricity Board (1995 (5) S.C.C. 27) the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workman of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute, if, however, he comes to the conclusion that the contract is genuine, he may refer the workman to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt

of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms."

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujarat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible be so interpreted "ut res magis valeat quam pereat". (a liberal construction should be put upon written instruments so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases

overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who finds his cause of action upon an immoral or an illegal Act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and her colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An Agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to project workmen as a class against unfair labour practices. A dispute of an individual workmen would acquire status of an industrial dispute if it affects the rights of the workman as a class. An industrial dispute denotes two qualities which distinguish it from an

individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and her colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex. MW3/1. Contents of clause 24 of Ex. MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and her colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex. MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex. MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex. MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be: (1) privity of contract, or (2) privity of estate. When Ex. MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration: "when at the desire of the promisor,

the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However, consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex. MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a months a contract labour worked, whether

overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex. WW1/M4 to Ex. WW1/M6 project total work days of the respective months for which the claimant worked, besides the number of days on which she remained on leave without pay. These documents project minimum rates of wages paid to her in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao (1958 (II) LLJ 252) the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to this control and supervision. In Food Corporation of India (1985 (II) LLJ 4) Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited (1957 (I) LLJ 477), the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to

the nature of work where was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court In Chintaman Rao (*supra*), wherein It was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje (1962(1) LLJ 119), the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P.Gopala Rao (1970 (11) LLJ 59), the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House (1973 (11) LLJ 495) the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it would be wrong to say that in every case it is a decisive factor. In Shining Tailors (1983 (11) LLJ 143), the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was "observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition

that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K.Keswa Reddiar (1957(1) LLJ 645). In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar (1968(1) LLJ 500). An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab.I.C.1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank (1990(1) LLJ 50).

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex.MW3/1 ? For an answer, a few clauses of Ex.MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling her in respect of manner of doing the work. Power of the Contractor to replace the claimant from her work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change her, if not consented by the University. If the University decided to get her changed, for any reasons whatsoever, the Contractor could not impose her on the former, no matter her work and conduct

were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and her other 69 colleagues. Who used to mark attendance of the claimant and her colleagues Ex.MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised her work. Vacuum of facts in Ex.MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and her colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behavior or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in cause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct." This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and her associates. This right is an attribute of disciplinary control exercised by an employer on this employees.

56. Construction adopted on contexts of Ex. MW3/1 is based on the standards of presumed intent of parties. the construction, so put, with an idea to preserve the will of the parties to Ex. MW3/1 . It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW3/1 is sham and bogus. There was relatives of relationship of employer and employees between the University and the claimant and her other 69 colleagues. In view of the foregoing reasons, it is concluded that the veil of Ex. MW3/1 is a smoke-screen, which would not snap relationship between

the University and the claimant and her colleagues. Adoresaid two issues are accordingly answered.

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services wea give to the New Contractor. He asserts that owing to illegal demands of the claimant and her colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex. MW3/2/5, by Shri Shive Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the grab of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and her colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exception, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services *w.e.f.* 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that she rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 35-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in Section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgement Ex.MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor her colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgement Ex.MW2/5 would not operate as *res judicata* in the present controversy. Law contained in section 11 of the Code of Civil Procedure, 1908 (in short the Code) embodies the doctrine of *res judicata* or the rule of conclusiveness of a judgement, as to the point decided either of fact, or of law,

or a of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. the doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta. J. in the case of *Statyadhyana Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again."

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be re-agitated in collateral proceedings. Law to this effect was laid in *Mathura Prashad* (1970 (1) SCC 613). A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res judicata, the court which decided that suit must have been either - (a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try an industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Automobiles Ltd.* (1975 (II) LLJ. 445), whererin following principles were enunciated:

- (I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In Rajasthan State Road Transport Corporation (1995 Lab. I.C. 2241), the apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Wherer the dispute arises from general law of contract, *i.e.*, where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "Industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to Industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex-facie*. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication. (5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Cort/Industrial Tribunal directly—*i.e.*, without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provision". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1, referred in para 64, do not come into play. Therefore, judgement Ex. MW2/5 cannot operate as *res-judicata*. It would not restrain the claimant in any manner, from agitating her claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is conditions precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void *ab initio*. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. (1993 (II) LLJ 174). As detailed above, retrenchment of the claimant is illegal and void *ab initio*. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation

of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. Her services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. Her retrenchment was found to be void ab initio. She, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. She is deemed to be in the service of the University Question comes whether she is entitled to full back wages. For an answer in her favour, she was under an obligation to establish that she remained unemployed since the date of her retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that she remained unemployed, since the date of dispensing with her services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty (1957 (11) LLJ 696) the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab. I. 1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz* (i) the back wages

receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab. I.C. 1887).

69. In Assam Oil Co. Ltd. (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. (1966 (1) LLI 398) the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [(1970 (1) IJ 228)] compensation equivalent to two year salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty [(1962 (II) LLJ 483)] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [(1986 (II) LLJ 509)], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh [(1993 Lab.I.C 44)] the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor [(1984(II) LLJ 473)] The Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [(1985 (II) LLJ 19)] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab I.C.1225) a compensation of Rs. 2 lac by way of back

wages in lieu of reinstatement was awarded. In Ras Bihar (1988 Lab I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employees was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years service to the University, when she was illegally retrenched. She had to fight for about four years for redressal of her grievances. The circumstances, in which she was retrenched and mass unemployment prevalent in economic field, which may come in the way when some one goes for an alternative employment, besides other factors of this case, persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 09.12.2011.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 1 फरवरी, 2012

का०आ० 819.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्दिरा गांधी नैशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या-17/2010 को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/02/2012 प्राप्त हुआ था।

[फांस० एल-42012/103/2009-आई०आर० (डी०य०)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 819.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.17/2010) of the Central Government Industrial Tribunal cum Labour Court No. 1 **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on **01.02.2012**.

[F. No. L-42012/103/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D. No.17/2010

Smt. Santosh Devi W/o Shri Balbir,
H.N. 123, Balmik Basti,
Maidan Garhi,
New Delhi-68.

CLAIMANT

Versus

The Vice Chancellor,
Indira Gandhi National Open University,
R.No. 1, block No. 8, Maidan Garhi,
New Delhi-110068.

Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes clearing and sanitation activities. Housekeeping services are out-sourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan

Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, involving its powers under clause (d) of sub-section (1) of section 10 of the Act, *vide* order No. L-42012/103/2009-IR(DU) New Delhi dated 28th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Smt. Santosh Devi *w.e.f.* 01-11-2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Smt. Santosh Devi claims in her claim statement that she was working with the University as "Safai Karamchari" in its housekeeping department since 1.5.2005. She had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, she was asked to fill in certain forms, which forms duly filled and signed by her are in the custody of the University. No appointment letter was issued in her favour, inspite of her request in that behalf. Since inception of her engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning her service conditions. At times she, alongwith her colleagues, was kept at its rolls by the University, while during intermittent spells her services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount her continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from her but no compensatory leave or overtime wages were given to her.

She used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place her services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to her. To her utter surprise a contractor surfaced on scene and told her and her colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and her colleagues wanted to see the Vice-Chancellor to appraise him of their grivances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to he and her colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to her. Her services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. She claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University .

9. To outsource housekeeping services, the University engaged services of the Contractor, *vide* agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a new clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc., who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect

of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and her other colleagues. The claimant and her colleagues resorted to illegal demonstration in the University premises. A civil suit being CS (OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the Housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in her claim statement. It is pleaded that the claimant knew her status, being an employee of the Contractor. Her services were terminated by the Contractor and the University has no role to play in so called termination of her services. Her claim against the University

is illegal, unwarranted and unjustified. It is pleaded that her claim may be dismissed.

12. An application moved by the University, to implead to Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employee and employee between the claimant and the management?
2. Whether the claimant was an employee of Sybex Computer System Pvt., Ltd., the Contractor?
3. As in terms of reference.
4. Relief.

14. To discharge onus resting on her, the claimant examined Sh. Sudhir Arora, Shri Syed Faizal Huda and herself and closed her evidence. The University examined Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex.WW1/A was tendered as evidence on behalf of the claimant, wherein she swore that she was in the employment of the University as "Safai Karamchari" since 1.5.2005. It has been projected in Ex. WW1/A that she rendered more than 240 days service with the University. Except this new fact, other facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as Ex. WW1/M1. She candidly admitted her signatures on documents Ex. WW1/M2 to Ex. WW1/M9.

17. Dr. S.S. Bisht tendered his affidavit Ex. MW3/A as evidence, he announced that the claimant was never appointed by the University in its services. No salary was ever paid to her. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor, With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when she was not engaged by the New Contractor,

she alongwith her colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, she had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

18. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex.MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

19. When facts testified by the claimant, Dr. S. S.Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed facts which are inconsistent to each other. In her testimony hse deposes that she was working with the University from last three years. Contra to it, she projects in her claim statement that the University at times transferred her services at the roll of one contractor or the other. Thus it is evident that discrepant facts were recklessly uttered by her. These swingers do not find any corroboration from any other piece of evidence, direct or circumstantial. Self-serving words, deposed by the claimant, could not withstand rigors of cross-examination, wherein she admitted that Ex. WW1/M2, Ex. WW1/3, Ex. WW1/M4, Ex. WW1/M5, Ex. WW1/M6, Ex. WW1/M7, Ex. WW1/M8 , Ex. WW1/M9, bear her signatures. When perused it came to light that Ex. WW1/M4, to Ex. WW/M9, are wage-sheets of the Contractor, though which salary of the claimant and her colleagues were released by the former in their-favour. These documents project her to be an employee of the Contractor. Thus by an admission of her signatures on above documents she allowed a fact to spill over, which demolishes her case of being an employee of the University. Ex. WW1/M2, and Ex. WW1/M3, are also photocopy of scrolls through which payments were released by the Contractor to the claimant and her colleagues. In the end she gave in and deposed that she not aware as to who engaged her. However she made a faint attempt to project her cause when she asserted that she used to work for the University. Conspectus of above facts spill the beans and announce her to be an employee of the Contractor.

20. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced vide agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor,

vide agreement Ex. MW3/2. When new Contractor did not engage the services of the claimant and her colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8 , Ex. MW3/9 and Ex. MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18 , and Ex. MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex. MW3/21 was written by the bank in that regard. He had proved list of contractors as Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to her. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex.MW3/21. Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of her salaries to her. It was the Contractor who was her pay master.

21. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake to convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, as State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under subsection (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work

and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, It is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation—If a question arises whether any process of operation or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

22. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".... they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the

correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed the employees of the principal employer."

23. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further rules therein that in Saraspur Mills case [1947 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgement in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in calss (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by the contract labour in regard to conditions of service, the industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

24. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will

have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

25. In Shivnandan Sharma [1955(1) LLJ. 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

26. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of

intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

27. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc., if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since she agitates that the contract agreement between the University and the Contractor is sham and nominal.

28. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

29. In the Steel Authority of India (*supra*) the Apex Court laid emphasis "...the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such as interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

30. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish

or modify system of contract labour. Reference can be made to precedents in United Salt Work and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717] National Iron & Steel Co. [1967 (II) LLJ. 23] and Ghage and Patil (Transport) Pvt. Ltd. [1968(I) LLJ. 556]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11 Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done is most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

31. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.**** The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate

Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

32. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the Industrial adjudicator has jurisdiction to do so.
 - (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of that Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
 - (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the esrtwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
 - (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".
33. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujarat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.
34. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules *viz.*, written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction

should be put upon written instruments, so as to uphold them if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

35. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention on contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

36. Whether Ex.MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

37. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and her colleagues.

38. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "Industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the

terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affected the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and her colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex.MW3/1. Contents of clause 24 of Ex.MW3/1, being unlawful, cannot be supported at law.

39. A restriction is imposed on the claimant and her colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex.MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex.MW3/1 is to be discarded, being violative of law.

40. In mercantile transactions stipulations are agreed upon between the parties on principal to principal to agent basis. In both the propositions there is a privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex.MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex.MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

41. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, absitnence

or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration: "when at the desire of the promise, the promis or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the primise".

42. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligations arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

43. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex.MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

44. As detailed above charges on the basis of number of personnel deployed on rates quoted by the Controctor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to where Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absnecne of tender document created a vacuum. Parol evidence was brought on record to the

effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

45. Wages sheet Ex. WW1/M4 to Ex. WW1/M9 project total work days of the respective months for which the claimant worked, besides the number of days on which she remained on leave without pay. These documents project minimum rates of wages paid to her in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

46. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao [1958 (II) LLJ 252] the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985(II) LLJ4] Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

47. In Dharangadhara Chemical Works Limited [1957 (1) LLJ 477], the Apex Court ruled that test of "supervision and control may be taken as the prima facie test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the prima facie test for determining the existence of master and servant

relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In shankar Balaji Waje [1962(1)LLJ119], the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao [1970 (11) LLJ 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House [1973 (11) LLJ 495] the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

48. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decessive factor, but it would be wrong to say that in every case it is a decessive factor. In Shining Tailors [1983 (11) LLJ 143], the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervisor" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The

Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A goldsmith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K. Keswa Reddiar [1957 (1) LLJ 645]. In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968(1) LLJ 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab.I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be a falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990(1) LLJ 50].

49. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

50. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex. MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not

change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

51. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling her in respect of manner of doing the work. Power of the Contractor to replace the claimant from her work place was made subject to permission of the University. Despite the choice of the Contractor or replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change her, if not consented by the University. If the University decided to get her changed, for any reasons whatsoever, the Contractor could not impose her on the former, no matter her work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

52. Contract agreement Ex. MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and her other 69

colleagues. Who used to mark attendance of the claimant and her colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised her work. Vacuum of facts in Ex. MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and her colleagues.

53. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behaviour or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and her associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

54. Construction adopted on contents of Ex. MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex. MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and her other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex. MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and her colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

55. Dr. S.S. Bisht announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and her colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to

illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex. MW2/5, by Shri Shiv Prakash.

56. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and her colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.05.2005 till 31.10.2007, as an employee of the Contractor. Thus it is clear that she rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

57. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. [1993 (II) LLJ 174]. As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

58. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. Her services were disengaged

under the garb of award of housekeeping service agreement to the New Contractor. Her retrenchment was found to be void ab initio. She, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. She is deemed to be in the service of the University. Question comes whether she is entitled to full back wages. For an answer in her favour, she was under an obligation to establish that she remained un-employed since the date of her retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that she remained unemployed, since the date of dispensing with her services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future ...In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would be under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

59. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab. 1.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the

disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C. 1887).

60. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 lab. I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab. I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab. I.C. 107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

61. The claimant rendered continuous two and a half years' service to the University, when she was illegally retrenched. She had to fight for about four years for redressal of her grievances. The circumstances, in which she was retrenched and mass unemployment prevalent in

economic field, which may come in the way when some one goes for an alternative employment, besides other factors of this case, persuade me to award 20 percent back wages from the date of retrenchment till the date the award become operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated: 9-12-2011

नई दिल्ली, 1 फरवरी, 2012

का०आ० 820.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चासलर, इन्द्रा गांधी नेशनल ओपन यूनिवर्सिटी प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 09/2010.....) को प्रकाशित करती है जो केन्द्रीय सरकार को 01-02-2012 को प्राप्त हुआ था।

[फांसं एल-42012/90/2009-आई आर (डी०य०)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (**Ref. No. 09/2010**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on 01/02/2012.

[F.No. L-42012/90/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D. NO. 9/2010

Shri Pappu Singh S/o Shri Attar Singh,
H.No. 153, Harijan Basti,
Vill. Nebsarai,
New Delhi.

CLAIMANT

Versus

The Vice Chancellor,
Indira Gandhi National Open University,
R. No. 1, Block No. 8, Maidan Garhi,
New Delhi-110068.
Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the borders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are out-sourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/90/2009-IR(DU) New Delhi dated 07th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Shri Pappu Singh w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Shri Pappu Singh claims in his claim statement that he was working with the University as "Safai Karamchari" in its housekeeping department since

1.11.2004. He had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, he was asked to fill in certain forms, which forms duly filled and signed by him are in the custody of the University. No appointment letter was issued in his favour, inspite of his request in that behalf. Since inception of his engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning his service conditions. At times he, alongwith his colleagues, was kept at its rolls by the University, while during intermittent spells his services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount his continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from his wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from him but no compensatory leave or overtime wages were given to him. He used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place his services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to him. To his utter surprise a contractor surfaced on scene and told him and his colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at workplace and others may leave for good. The claimant and his colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got severe beatings administered to him and his colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to him. His services were not done away on infliction of punishment for disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. He claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or

other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, vide agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between in Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and his other colleagues. The claimant and his colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in his claim statement. It is pleaded that the claimant knew his status, being an employee of the Contractor. His services were terminated by the Contractor and the University has no role to play in so called termination of his services. His claim against the University is illegal, unwarranted and unjustified. It is pleaded that this claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?
2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?
3. As in terms of reference.
4. Relief.

14. To discharge onus resting on him, the claimant examined himself and closed his evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash , Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein he swore that he was

in the employment of the University as "Safai Karamchari" since 1.11.2004. It has been projected in Ex. WW1/A that he rendered more than 240 days service with the University. Other facts detailed in Ex. WW1/A are facsimile or content of claim statement, which has been proved as Ex. WW1/M1. He candidly admitted his signatures on documents Ex. WW1/M2 to Ex. WW1/M5.

17. Smt. Bimla Madan unfolds that Regional Office of the Employers' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2141 was given to Shri Pappu Singh, the employee of the above company. Name of Pappu Singh appears in statements of contributions Ex. MW1/1 and Ex. MW1/2, filed by his employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in the case, interim order dated 15.1.2008 and judgement dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex. MW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgement Ex. MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex. MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to him. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when he was not engaged by the New Contractor, he alongwith his colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, he had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex. MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed that he was in the service of the University since 1.11.2004. Self-serving words,, deposed by the claimant, could not withstand rigors of cross-examination, wherein he admitted

that Ex. WW1/M2, Ex. WW1/M3, Ex. WW1/M4 and Ex. WW1/M5 bear his signatures. When perused it came to light that Ex. WW1/M4 to Ex. WW1/M5 are wage-sheets of the Contractor, though which salary of the claimant and his colleagues were released by the former in their favour. These documents project him to be an employee of the Contractor. Thus by an admission of his signatures on above documents he allowed a fact to spill over, which demolishes his case of being an employee of the University. Ex. WW1/M2 is also photocopy of scrolls through which payments were released by the Contractor to the claimant and his colleagues. In the end he gave in and deposed that he was not aware as to who engaged him. However he made a faint attempt to project his cause when he asserted that he used to work for the University. Conspectus of above facts spill the bean and announce him to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced *vide* agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, *vide* agreement Ex. MW3/2. When New Contractor did not engage the services of the claimant and his colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8, Ex. MW3/9 and Ex. MW3/10 deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18 and Ex. MW3/19, Dr. Bisht detailed. Payments were made to the contractor through cheques, which were honoured and cleared and letter Ex. MW3/21 was written by the bank in that regard. He had proved list of contractors as Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to him. Smt. Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex. MW3/21. Sequences of events, brought over the record through the depositions of adoresaid witnesses and documents proved by them,

highlight that the claimant was an employee of the Contractor, who used to make payment of his salaries to him. It was the Contractor who was his pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

Notwithstanding anything contained in the Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation — If a question arises whether any process or operation or other work is of perennial nature the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (2001 (7) S.C.C.I.). the Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the

appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRAAct, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employee of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. it was further ruled therein that in Saraspur Mills case (1974 (3) SCC 66), the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgement in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial Adjudicator will have to consider the question whether the contractor has been

interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) LLJ 233), which was referred with approval in steel Authority of India.

27. In Shivnandan Sharma (1955(1) LLJ 688), the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: the appellant an employee, of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective

control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies

workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case (1999 (6) S.C.C. 439) etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis ".....the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the

principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962 (I) LLJ. 131), Shibu Metal Works (1966 (I) LLJ. 717), national Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ. 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vigoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it

becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

34. In Gujarat Electricity Board (1995(5) S.C.C. 27) the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer

the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*spura*) and Gujarat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected

by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonus mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are contra bonus mores or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the

Constitution and is violative of the fundamental right guaranteed to the claimant and his colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and his colleagues to act collectively as a body of men to protect their rights while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex.MW3/1. Contents of clause 24 of Ex.MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and his colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex.MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex.MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex.MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract.

There may be (1) privity of contract, or (2) privity of estate. When Ex.MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promise or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promise or a benefit to the promisor. Section 2 of the Contract Act defines consideration: "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise?"

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the counts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex.MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex.MW3/1 those rate are not detailed. Thus tender document becomes a part of Ex.MW3/1. It has not been placed before the Tribunal. As detailed

above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex.MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable Tribunal to reach a conclusion whether the Contractor had put his hands to Ex.MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex.WW1/M4 to Ex.WW1/M5 project total work days of the respective months for which the claimant worked, besides the number of days on which the remained on leave without pay. These documents project minimum rates of wages paid to him in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex.MW3/11 to Ex.MW3/19. Cheques issued in favour of the contractor are proved as Ex.MW3/5 to Ex.MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the contractor was paid by the University for services rendered by him. Thus adequacy of consideration of services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex.MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao (1958 (II) LLJ252) the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employees is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India (1985 (II) LLJ4) Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and

obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited (1957 (1) LLJ 477), the Apex Court ruled that test of "supervision and control may be taken as the prima facie test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the prima facie test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje (1962(1)LLJ119), the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Roa (1970 (11) LLJ 59), the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House (1973 (11) LLJ 495) the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken done. It has been said that in interpreting "control" as

meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age.

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it would be wrong to say that in every case it is a decisive factor. In shining Tailors (1983 (11) LLJ 143), the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K.Keswa Reddiar (1957 (1) LLJ 645). In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar (1968(1) LLJ 500). An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab.I.C.1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contract in the precedent in the Management of Indian Bank (1990 (1) LLJ 50).

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex.MW3/1? for an

answers, a few clauses of Ex.MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling him in respect of manner of doing the work. Power of the Contractor to replace the claimant from his work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the

University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The contractor should not exercise his earnest will to change him, if not consented by the University. If the University decided to get him changed, for any reasons whatsoever, the contractor could not impose him on the former, no matter his work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and his other 69 colleagues. Who used to mark attendance of the claimant and his colleagues Ex.MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised his work. Vacuum of facts in Ex.MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and his colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improver behavior or to come in conflict with rules of standard of behaviour. Right to coin an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex.MW. 3/1 that "the University shall be sole judge as to what is against the interest of the University as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and his associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex./MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an ideal to preserve the will of the parties to Ex.MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general of Ex.MW3/1, intention of the parties contained therein, nature of the instrument and legal light of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the contractor. In fact the

University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex./MW3/1 is sham and bogus. There are realities of relationship of employer and employees between the University and the claimant and his other 69 colleagues. In view of the forging reasons, it is concluded that the veil of Ex.MW.3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and his colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S. S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and his colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgment dated 13.3.2009 has been proved as Ex.MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and his colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10.2007, as an employee of the Contractor. This it is clear that he rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of a warding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgment Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor his colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgment Ex. MW2/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyana Chosal (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again."

60. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

3. Such parties must have been litigating under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue

of fact, however erroneous it may be, constitutes res judicata between the parties to the previous suit and cannot be re-agitated in collateral proceedings. Law to this effect was laid in *Mathura Prashad* (1970 (1) SCC 613). A mixed issue of law and fact also, for the same reasons, operates as res judicata.

62. To invoke plea of res judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res judicata, the court which decided that suit must have been either - (a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Automobiles Ltd.* (1975 (ii) LLJ. 445), wherein following principles were enunciated:

- "(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (ii) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No.2, the Court added the "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In *Rajasthan State Road Transport Corporation* (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 9(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946- which can be called 'sister enactments' to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forum created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly-i.e., without the requirement of a reference by the Government-in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This

would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the industrial Employment (Standing Orders) Act, 1964 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claims and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of subsection (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1 referred in para 64 do not come into play. Therefore, judgement Ex. MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating his claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. (1993 (II) LLJ 174). As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. His services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. His retrenchment was found to be void ab initio. He, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. He is deemed to be in the service of the University. Question comes whether he is entitled to full back wages. For an answer in his favour, he was under an obligation to establish that he remained un-employed since the date of his retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that he remained unemployed, since the date of dispensing with his services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty (1957 (11) LLJ 696) the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future.... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab. I.C. 1755 (1758) deduced certain

guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab. I.C. 1887).

69. In Assam Oil Co. Ltd. (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "It would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. (1966 (1) LLJ 398) the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy (1970 (1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty (1962 (II) LLJ 483) the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent of 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab. I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab. I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab. I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C. 107)

a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years' service to the University, when he was illegally retrenched. He had to fight for about four years for redressal of his grievances. The circumstances in which he was retrenched and mass unemployment prevalent in economic field which may come in the way when some one goes for an alternative employment, besides other factors of this case persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 09.12.2011

नई दिल्ली, 1 फरवरी, 2012

का०आ० 821.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बाइस चासलंर, इन्द्रिरागांधी नेशनल ओपन यूनिवर्सिटी प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या-10/2010)–को प्रकाशित करती है जो केन्द्रीय सरकार को 01-02-2012 प्राप्त हुआ था।

[फा० सं० एल-42012/91/2009-आई आर (डी यू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby publishes the award (Ref. No. 10/2010) of the Central Government Industrial Tribunal cum Labour Court No. 1 New Delhi as shown in the Annexure in the Industrial Dispute between **the Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on 01.02.2012.

[F. No. L-42012/91/2009-IR(DU)]

Ramesh Singh, Desk Officer

ANNEXURE

Before Dr. R.K. Yadav, Presiding Officer, Central Govt. Industrial Tribunal No.1, Karkardooma Courts Complex: Delhi

I.D. No. 10/2010

Shri Prabhu Dayal S/o Shri Kali Charan,
H.No. 204, Gali No.1,

Dhani Ram Colony,
VIII. Maidan Garhi,
New Delhi-63

7
The Vice Chancellor,
Indira Gandhi National Open University,
R.No.1, Block No.8 Maidan Garhi,
New Delhi-110068.

Claimant

Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University required considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. "Housekeeping services are outsourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its

power under clause (d) of sub-section (1) of section 10 of the Act, vide order No.L42012/91/2009-IR(DU) New Delhi dated 07th January, 2010 with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Shri Prabhu Dayal w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Shri Prabhu Dayal claims in his claim statement that he was working with the University as "Safai Karamchari" in its housekeeping department since 1.11.2004. He had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, he was asked to fill in certain forms, which forms duly filled and signed by his are in the custody of the University. No appointment letter was issued in his favour, inspite of his request in that behalf. Since inception of his engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning his service conditions. At times he, alongwith his colleagues, was kept at its rolls by the University, while during intermittent spells his services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount his continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labour laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from his wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from him but no compensatory leave or overtime wages were given to him. He used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs.4500/- per month.

6. On 1st November 2007, the University decided to place his services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to him. To his utter surprise a contractor surfaced on scene and told him and his colleagues that he will pay them Rs.3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and his colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered

to him and his colleagues at their hands. Police was called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to him. His services were not done away on infliction of punishment for a disciplinary action , hence action of the University is violative of the provision of the Act and principles of natural justice. He claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, *vide* agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matter etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including

wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University for any dues, statutory or otherwise. Similarly, every the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for this own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and his other colleagues. The claimant and his colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No.83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in his claim statement. It is pleaded that the claimant knew his status, being an employee of the Contractor. His services were terminated by the Contractor and the University has no role to pay in so called termination of his services. His claim against the University is illegal, unwarranted and unjustified. It is pleaded that his claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?

2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?

3. As in terms of reference.

4. Relief.

14. To discharge onus resting on him, the claimant examined himself and closed his evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr.S.S.Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N.Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K.Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt.Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1& 2

16. Affidavit Ex.WW1/A tendered as evidence on behalf of the claimant, wherein he sweared that he was in the employment of the University as "Safai Karamchari" since 1.11.2004. It has been projected in Ex. WW1/A that he rendered more than 240 days service with the University. Other facts detailed in Ex.WW1/A are facsimile of contents of claim statement, which has been proved as Ex.WW1.M1. He cannidly admitted has signatures on documents Ex WW1/M2 to Ex.WW1/M9.

17. Smt Bimla Madan unfolds that Regional Office of the Employers' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2127 was given to Shri Prabhu Dayal, the employee of the above company. Name of Prabhu Dayal appears in statements of contributions Ex.MW1/1 and Ex.MW1/2, filed by his employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant Nos. 3 to 6, affidavit of Shri U.S. Tolia tenderd as evidence in that case, interim order dated 15.1.2008 and judgment dated 13.3.2009 passed by justice Ms. Rekha Sharma. These documents are proved as Ex.MW2/1 to Ex.MW2/5 respectively. He clarified that no appeal was preferred against the judgment Ex.MW2/5.

19. Dr.S.S. Bisht tendered his affidavit Ex.MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was every paid to him. Services of the Contractor were availed to outsource housekeeping services vide agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The Claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when he was not engaged by the New Contractor, he alongwith his colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, he had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi Branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex.MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex.MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr.S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed that he was in the service of the University since 1.11.2004. Self-serving words, deposited by the claimant, could not withstand rigors of cross-examination, wherein he admitted that Ex.WW1/M2, ExWW1/3, Ex.WW1/M4, Ex.WW1/M5, Ex.WW1/M6, Ex.WW1/M7,Ex.WW1/M8 and Ex. WW1/M9 bear his signatures. When perused it came to light that Ex.WW1/M4 to Ex.WW1/M9 are wage sheets of the Contractor, though which salary of the claimant and his colleagues were released by the former in their favour. These documents project him to be an employee of the Contractor. Thus by an admission of his signatures on above documents he allowed a fact to spill over, which demolishes his case of being an employee of the University. Ex.WW1/M2 is also photocopy of scrolls through which payments were released by the Contractor to the claimant and his colleagues. In the end he gave in and deposed that he was not aware as to who engaged him. However he made a faint attempt to project his cause when he asserted that he used to work for the University. Conspectus of above facts spill the beans and announce him to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was

working with the Contractor, whom housekeeping services were outsourced vide agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, vide agreement Ex. MW3/2. When New Contractor did not engage the services of the claimant and his colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8, Ex. MW3/9 and Ex. MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18, Ex. MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex. MW3/21 was written by the bank in that regard. He had proved list of contractor are Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to him. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employee's Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex. MW3/21 Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of his salaries to him. It was the Contractor who was his pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note to the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which make provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:-

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette employment

of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work in incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (2001 (7) S.C.C.I). The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes:(1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absolution of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the

establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer."

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case (1974 (3) SCC 66), the workman engaged for working in the canteen run by the Cooperated Society for the appellant were the employees of the appellant Mills. In Basti Sugar Mills (AIAR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgement in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of

contract labour or other wise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefit therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, that so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) LLJ. 233), which was referred with approval in Steel Authority of India.

27. In Shivnandan Sharma (1955(1) LLJ 688), the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employers, servant of the matter."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control

over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is virtually, laid off. the presence of intermediate contractor with whom alone the workers have immediate or direct relationship *ex-contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplied workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case (1999 (6) S.C.C. 439) etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute

against the University since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contravention of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor is complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis ".....the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible.". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of

the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962 (I) LLJ. 131), Shibu Metal Works (1966 (I) LLJ. 717), National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ. 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11 Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that act, if it becomes necessary. The observation made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.*** The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the

jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act."

34. In Gujarat Electricity Board (1995(5) S.C.C. 27) the same view has been taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute, if however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after the coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial

dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be adsorbed and on what terms."

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujrat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules *viz.*, written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction

should be put upon instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and efectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Court will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will end its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either *contra bonos mores*, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are *contra bonos mores* or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to joint in any Association/Forum of IGNOU."

39. Right to form association or unions sis a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and his colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and

"conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates of industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and his colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex.MW3/1. Contents of clause 24 of Ex.MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and his colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex.MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the even of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex.MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex.MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex.MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be

compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration: "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise."

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex.MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex.MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex.MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex.MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors

may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex.MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex.WW1/M4 to Ex.WW1/M9 project total work days of the respective months for which the claimant worked, besides the number of days on which he remained on leave without pay. These documents project minimum rates of wages paid to him in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as ex.MW3/11 to Ex.MW3/19. Cheques issued in favour of the Contractor are proved as Ex.MW3/5 to Ex.MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus, adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex.MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao (1958 (II) LLJ 252) the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India (1985 (II) LLI 4) Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited (1957 (1) LLJ 477), the Apex Court ruled that test of "supervision

and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje (1962(1)LLJ 119), the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao (1970 (11) LLJ 59), The Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishment the contract of service. It was laid therein that the holding that the persons employed in the factory were workers within the meaning of sub-section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bid which did not come in to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House (1973 (11) LLJ 495) the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to past age".

50. During the last three decades emphasis in the field and shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor

and in many cases it may still be a decessive factor, but it would be wrong to say that in every case it is a decessive factor. In Shining Tailors (1993 (11) LLJ 143), the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K. Keswa Reddiar (1957 (1) LLJ 645). In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufcture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar (1968 (1) LLJ 500). An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab.I.C. 1970). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be failling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank (1990(1) LLJ 50).

51. As emerge out, element of control or supervision of employer in respect of detail of the work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex.MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall

remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University."

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what was to be done by the claimant, but also of controlling him in respect of manner of doing the work was to be done by the claimant, but also of controlling him in respect of manner of doing the work. Power of the Contractor to replace the claimant from his work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus, it is crystal clear that the University retained power of allocation of duties, besides right to

control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change him, if not consented by the University. If the University decided to get him changed, for any reasons whatsoever, the Contractor could not impose him on the former, no matter his work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and his other 69 colleagues. Who used to mark attendance of the claimant and his colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the contractor who supervised his work. Vacuum of facts in Ex.MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and his colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behaviour or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, failing within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex.MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and his associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex.MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to persevere the will of the parties to Ex.MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in constructing a written instrument. Ascertaining general scope of Ex.MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded the efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract

employees. When veil was lifted, it emerged that Ex.MW3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and his other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex.MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and his colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and his colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex.MW3/1, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and his colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (00) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that he rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New contractor, is illegal and unjustified.

59. Whether judgment Ex. MW/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor his colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgment Ex. MW/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgement, as the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of *Statyadhyana Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of re-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again".

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter res-judicata under section 11 of the Code, the following condition must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

3. Such parties must have litigated under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an

issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be re-agitated in collateral proceedings. Law to this effect was laid in *Mathura Prashad* (1970 (1) SCC 613). A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke-plea of res judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res judicata, the court which decided that suit must have been either—(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Authomobiles Ltd.* (1975 (II) LLJ. 445), wherein following principles were enunciated:

- (I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In Rajasthan State Road Transport Corporation (1955 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called 'sister enactments' to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly—i.e., without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of

service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

65. Facts detailed in preceding sections make out that the rights which the claimant claims and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of subsection (1) of section 10 of the Act, High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1 referred in para 64 do not come into play. Therefore, judgment Ex.MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating his claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. (1933 (ii) LLJ 174). As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. His services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. His retrenchment was found to be void ab initio. He, being an employee of the University cannot be retrenched by the Contractor or the New

Contractor. He is deemed to be in the service of the University Question comes whether he is entitled to full back wages. For an answer is his favour, he was under an obligation to establish that he remained un-employed since the date of his retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that he remained unemployed, since the date of dispensing with his services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty (1957 (11) LLI 696) the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab. I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable; (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment; (v) capacity of the employer to pay and the nature of the employer's business; (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not

exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

69. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (ii) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50,000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (ii) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1933 Lab.I.C.44) the court directed payment of Rs. 75,000/- in view of reinstatement with back wages. In Naval Kishor [1984 (ii) LLJ 473] the apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (ii) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65,000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years' service to the University, when he was illegally retrenched. He had to fight for about four years for redressal of his grievances. The circumstances in which he was retrenched and mass unemployment prevalent in economic field which

may come in the way when some one goes for an alternative employment, besides other factors of this case persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 09-12-2011.

नई दिल्ली, 1 फरवरी, 2012

का०आ० 822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्द्रियांगनीथी नैशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के प्रचाट (संदर्भ संख्या 08/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/02/2012 प्राप्त हुआ था।

[फा०सं० एल-42012/93/2009-आई०आर०(डी०य०)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O..822.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 08/2010**) of the Central Government Industrial Tribunal cum Labour court No.1 **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Ghandhi National Open University and their workman**, which was received by the Central Government on **01.02.2012**.

[F.No.L-42012/93/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D. No. 8/2010

Shri Suraj S/o Shri Ram Sarup,

H.No. 129, Balmiki Basti,

Vill. Maidan Garhi

New Delhi-63.

Versus

Claimant

The vice Chancellor,

Indira Gandhi National Open University,

R.No. 1, Block No. 8, Maidan Garhi,

New Delhi-110068.

Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities, Hosekeeping services are outsourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Camput of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/93/2009-IR(DU) New Delhi dated 07th January, 2010, following terms:

"Whether the Action of the management of Indira Gandhi National Open University, in terminating the services of their workman Shri Suraj w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Shri Suraj claims in his claim statement that he was working with the University as "Safai Karmchari" in its housekeeping department since 1.11.999. He had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, he was asked to fill in certain forms, which forms duly filled and signed by him are in the custody of the University. No appointment letter was issued in his favour, inspite of his request in that behalf. Since inception of his engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning his service conditions. At times he, alongwith his colleagues, was kept at its rolls by the University, while during intermittent spells his services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount his continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from his wages by the University, pleads the claimant. Despite payment of contribution towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from him but no compensatory leave or overtime wages were given to him. He used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place his services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to him. To his utter surprise a contractor surfaced on scene and told him and his colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and his colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to him and his colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment corporation was also not paid to him. His services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the

provision of the Act and principles of natural justice. He claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, *vide* agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payment, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider of IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect

of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and his other colleagues. The claimant and his colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in his claim statement. It is pleaded that the claimant knew his status, being an employee of the Contractor. His services were terminated by the Contractor and the University has no role to pay in so called termination of his services. His claim against the University is illegal, unwarranted and unjustified. It is pleaded that his claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employee and employee between the claimant and the management?

2. Whether the claimant was an employer of Sybex computer System Pvt. Ltd., the Contractor?

3. As in terms of reference.

4. Relief.

14. To discharge onus resting on him, the claimant examined himself and closed his evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, assstt.

Registrar (Law), raised submission on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein he swore that he was in the employment of the University as "Safai Karamchari" since 1.11.1999. It has been projected in Ex. WW1/A that he rendered more than 11 years service with the University. Other facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as Ex. WW1/M1. He candidly admitted his signatures on documents Ex. WW1/M2 to Ex. WW1/M11.

17. Smt. Bimla Madan unfolds that Regional Office of the Employers' Provident fund Organisation had given code number as DL-24878 to the Contractor, while code number 2136 was given to Shri Suraj, the employee of the above company. Name of Suraj appears in statements of contributions Ex. MW1/1 and Ex. MW1/2, filed by his employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgment dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex. MW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgment Ex. MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex. MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to him. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when he was not engaged by the New Contractor, he alongwith his colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, he had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given Ex. MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex.

MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed that he was in the service of the University since 1999. Self-serving words, deposed by the claimant, could not withstand rigors of cross-examination, wherein he admitted that Ex. WW1/M2, Ex. WW1/M3, Ex. WW1/M4, Ex. WW1/M5, Ex. WW1/M6, Ex. WW1/M7, Ex. WW1/M8, Ex. WW1/M9, Ex. WW1/M10 and Ex. WW1/M11 bear his signature. When perused it came to light that Ex. WW1/M4 to Ex. WW1/M11 are wage-sheets of the Contractor, though which salary of the claimant and his colleagues were released by the former in their favour. These documents project his to be an employee of the Contractor. Thus by an admission of his signatures on above document he allowed a fact to spill over, which demolishes his case of being an employee of the University. Ex. WW1/M2 is also photocopy of scrolls through which payments were released by the Contractor to the claimant and his colleagues. In the end he gave in and deposed that he was not aware as to who engaged him. However he made a faint attempt to project his cause when he asserted that he used to work for the University. Conspectus of above facts spill the beans and announce him to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced *vide* agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, *vide* agreement Ex. MW3/2. When New Contractor did not engage the services of the claimant and his colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payment were made through cheques Ex. MW3/5, Ex. MW3/6, Ex. MW3/7, Ex. MW3/8, Ex. MW3/9 and Ex. MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW3/11, Ex. MW3/12, Ex. MW3/13, Ex. MW3/14, Ex. MW3/15, Ex. MW3/16, Ex. MW3/17, Ex. MW3/18 and Ex. MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex. MW3/21 was written by the bank in that regard. He had proved list of contractor as Ex. MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 1.6.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages

to him. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statement name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex. MW3/21. Sequence of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the contractor, who used to make payment of his salaries to him. It was the contractor who was his pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced Thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation — If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate government may, by notification in the official gazette, prohibit employment of contract labour in any process, in any process, operation or other work in any establishment.

When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such case do not relate to the abolition of contract labour but present instance wherein the court pierce the veil and declared the contract position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principle employer availed the services of the contractor the courts have held that the contract labour would indeed be employees of the principal employer."

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3)

mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLI. 233], which was referred with approval in Steel Authority of India.

27. In Shivnandan Sharma [1955(1) LLI 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court Was: was the appellant a employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed

by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-*contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms by another. The management's adventitious connections cannot ride into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that term "contact labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in

complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis ".....the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible." The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employees of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962 (I) LLJ. 131), Shibu Metal Works (1966 (I) LLJ. 717), National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patial (Transport) Pvt. Ltd. (1968 (I) LLJ. 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of "middlemen."

33. After Contract Labour Act was brought on statute book, the Apex court examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971(2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that jurisdiction to decide about the abolition of contract labour, or to put differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.*** The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act."

34. In Gujarat Electricity Board (1995 (5) S.C.C. 27) the same view was taken by the Apex Court holding that the authority to abolish the contract labour vests in the appropriate Government and not in court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen

of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief of the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption, However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (*supra*) and Apex Court had referred the precedents in Vegoils case (*supra*) and Gujrat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employees of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement which has been proved as Ex. MW3/1 by Dr. Bisht. In construction of contents of Ex. MW3/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be so interpreted other magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either *cotra bonos mores*, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex. MW3/1 contains clauses which are *contra bonos mores* or forbidden by law? When perused, clause 24 of Ex. MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form association or unions is a

fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to be initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and his colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute co. Ltd. (1979 Lab. I.C. 513)." "An agreement between a single employer or an association of employer on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affect the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and his colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex. MW3/1. Contents of clause 24 of Ex. MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and his colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex. MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. consequently this Part of clause 23 of Ex. MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex. MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex. MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration" "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely not illusory. A mere mere obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.²

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex. MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University

shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence to tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages that Ex. WW1/M4 to Ex. WW1/M11 project total work days of the respective months for which the claimant worked, besides the number of days on which remained on leave without pay. These documents project minimum rates of wages paid to him in month, out of which deductions towards E.P.F. and E.S.O. subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao (1958 (II) LLJ 252) the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee whereunder the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India (1985(II) LLJ 4) Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited (1957 (I) LLJ 477), the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment." It was further laid that existence of the right in the master to supervise and control and work to be done by the servant, not only matter of directing that work and servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercise over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje (1962(1) LL 119), the Apex Court clarified that control of management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao (1970 (11) LLJ 59), the Apex Court said that it is the question of fact in each case whether the relationship of master and servant existing between the management and the workman and there is no abstract *a priori* test of the work control required for establishing

the contract of service. It was laid therein that for holding that the person employed in the factory were workers within them earning of sub-section (1) of section of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied indifferent Industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House (1973 (11) LLJ 495) the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decessive factor, but it would be wrong th say that in every case it is a decessive factor. In Shining Tailors (1983 (11) LLJ 143), the Apex court held that the piece rated workers working for a big tailoring establishment were worken for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rates workers were the workmen for the establishment. The court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is a independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engaged themselves or others of their own were held to be independent contractors, in K. Keswa Reddiar (1957 (1) LLJ 645). In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar (1968 91) LLJ 500). An agreement for selling milk on commission wes held to be a contact for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahemdabad (1989 Lab.I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank (1990 (1) LLJ 50).

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identify in mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether element of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex.MW3/1? For an answer, a few clauses of Ex.MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the propose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

53. As project above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14

wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling him in respect of manner of doing the work. Power of the Contractor to replace the claimant from his work place was made subject to permission of the University. Despite the choice to the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The contractor could not exercise his earnest will to change him, if not consented by the University. If the University decided to get him changed, for any reasons whatsoever, the contractor could not impose him on the former, no matter his work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and his other 69 colleagues. Who used to mark attendance of the claimant and his colleagues Ex.MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised his work. Vacuum of facts in Ex.MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and his colleagues.

55. disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behavior or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of MW. 3/1 that "the University shall be sole judge as to what is against the interest of the University as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and his associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex/MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an ideal to preserve the will of the parties to Ex.MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex.MW3/1, intention of the parties contained therein, nature of the instrument and legal light of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex/MW3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and his other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex.MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and his colleagues. Aforesaid two issues are accordingly answered.

57. Dr. S. S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and his colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgment dated 13.3.2009 has proved as Ex.MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University/ Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and his colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein, Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10.2007, as an employee of the Contractor. This it is clear that he rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are

mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of warding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgment Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor his colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgment Ex. MW2/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of *Statyadhyana Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again."

60. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

3. Such parties must have been litigating under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an

issue of fact, however erroneous it may be, constitutes res judicata between the parties to the previous suit and cannot be re-agitated in collateral proceedings. Law to this effect was laid in *Mathura Prashad* (1970 (1) SCC 613). A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res judicata, the court which decided that suit must have been either—(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to right and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Automobiles Ltd.*(1975(II)LLJ. 445), wherein following principles were enunciated:

- "(I) If the dispute is not an industrial dispute, not does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No.2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In *Rajasthan State Road Transport Corporation* (1995 Lab.IC.2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:—

""(1) Where the dispute arises from general law of contract *i.e.*, where reliefs are claimed on the basis of the

general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to Industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex-facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly *i.e.*, without the requirement of a reference by the Government—in case of industrial dispute covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified STanding Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) the policy of law emerging from Industrial Disputes Act and its sister enactments to provide an alternative dispute resolution mechanism to the workmen, a

mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its power under clause (d) of sub-section (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, principle 2, referred in para 63 and Principle 1, referred in para 64, do not come into play. Therefore, judgement Ex. MW2/5 cannot operate as re-Judicata. It would not restrain the claimant in any manner, from agitating her claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. (1993 (II) LLJ 174). As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. His services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. His retrenchment was found to be void ab initio. He, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. He is deemed to be in the service of the University. Question comes whether he is entitled to full back wages. For an answer in his favour, he was under an obligation to establish that he remained un-employed since the date of his retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that he remained unemployed, since the date of dispensing with his services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found

expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty (1957 (11) LLJ 696) the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The Industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab. 1.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C. 1887).

69. In Assam Oil Co. Ltd. (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. (1966 (1) LLJ 398) the amount of

compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy (1970) (1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty (1962 (II) LLJ 483) the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari (1986 (II) LLI 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab. I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab. I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab. I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab. I.C. 107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab. I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years' service to the University, when he was illegally retrenched. He had to fight for about four years for redressal of his grievances. The circumstances in which he was retrenched and mass unemployment prevalent in economic field which may come in the way when some one goes for an alternative employment, besides other factors of this case persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated: 09.12.2011

नई दिल्ली, 1 फरवरी, 2012

कांआ० 823.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्द्रिरामांथी नेशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबद्ध नियोजकों

और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या - 06/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/02/2012 प्राप्त हुआ था।

[फा० सं० एल-42012/94/2009 आई. आर. (डी.यू.)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 823.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 06/2010**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on 01.02.2012.

[F.No. L-42012/94/2009-IR(DU)]

Ramesh Singh, Desk Officer

ANNEXURE

DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D. No. 6/2010

Smt. Mukesh W/o Shri Surender

H.No. 129, Balmiki Basti,

Maidan Garhi,

New Delhi.

versus

Claimant

The Vice Chancellor,

Indira Gandhi National Open University,

R.No. 1, Block No. 8, Maidan Garhi,

New Delhi-110068.

MANAGEMENT

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activites. Housekeeping services are out-sourced by the University through a private contractor. In

the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November, 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/94/2009-IR(DU) New Delhi dated 7th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Smt. Mukesh w.e.f. 01.11.2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Smt. Mukesh claims in her claim statement that she was working with the University as "Safai Karamchari" in its housekeeping department since 1.6.1996. She had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, she was asked to fill in certain forms, which forms duly filled and signed by her are in the custody of the University. No appointment letter was issued in her favour, inspite of her request in that behalf. Since inception of her engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning her service conditions. At times she, alongwith her colleagues, was kept at its rolls by the University, while during intermittent spells her services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount her continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted

from her wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from her but no compensatory leave or overtime wages were given to her. She used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place her services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to her. To her utter surprise a contractor surfaced on scene and told her and her colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and her colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to her and her colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to her. Her services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. She claims reinstatement in the services of the University with continuity and condesential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the Univeristy to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, *vide* agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University

laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment to temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and her other colleagues. The claimant and her colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in her claim statement. It is pleaded that the claimant knew her status, being an employee of the Contractor. Her services were terminated by the Contractor and the University has no role to play in so called termination of her services. Her claim against the University is illegal, unwarranted and unjustified. It is pleaded that her claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined *vide* order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?

2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?

3. As in terms of reference.

4. Relief.

14. To discharge onus resting on her, the claimant examined herself and closed her evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Assstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein she swore that she was in the employment of the University as "Safai Karamchari" since 1.6.1996. Facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as Ex. WW1/M1. However she admits in her cross-examination that she is serving the University since 2004. She candidly admitted her signatures on documents Ex.WW1/M2 to ExWW1/M8.

17. Smt. Bimla Madan unfolds that Regional Office of the Employer's Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2126 was given to Smt. Mukesh, the employee of the above company. Name of Mukesh appears in statements of contributions Ex.MW1/1 and ExMW1/2, filed by her employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgement dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex.MW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgements Ex.MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex.MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to her. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when she was not engaged by the New Contractor, she alongwith her colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, she had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex.MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex.MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed facts which are inconsistent to each other. In her claim statement she projected a case that she was in the service of the University since 01.06.1996. In her affidavit Ex.WW1/A too, she tried to assert that she was in the services of the University since 1.6.1996. However, during the course of her cross-examination she asserts that she is serving the University since December 2004. This swindle does not find any corroboration from any other piece of evidence, direct or circumstantial. Self-serving words, deposed by the claimant, could not withstand rigors of cross-examination, wherein she admitted that Ex.WW1/M2,

Ex.WW1/M3, Ex.WW1/M4, Ex.WW1/M5, Ex.WW1/M6, Ex.WW1/M7, and Ex.WW1/M8 bear her signatures. When perused it came to light that Ex.WW1/M4, to Ex.WW1/M8 are wage-sheets of the Contractor, though which salary of the claimant and her colleagues were released by the former in their favour. These documents project her to be an employee of the Contractor. Thus by

an admission of her signatures on above documents she allowed a fact to spill over which demolishes her case of being an employee of the University. Ex.WW1/M2, and Ex.WW1/M3 are also photocopy of scrolls through which payments were released by the Contractor to the claimant and her colleagues. In the end she gave in and deposed that she was not aware as to who engaged her. However she made a faint attempt to project her cause when she asserted that she used to work for the University. Conspectus of above facts spill the beans and announce her to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, who housekeeping services were outsourced vide agreement dated 1.11.2004, copy of which is Ex.MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, vide agreement Ex.MW3/2. When New Contractor did not engage the services of the claimant and her colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex.MW3/M5, Ex.MW3/M6, Ex.MW3/7, Ex.MW3/8, Ex.MW3/9 and Ex.MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex.MW3/11, Ex.MW3/12, Ex.MW3/13, Ex.MW3/14, Ex.MW3/15, Ex.MW3/16, Ex.MW3/17, Ex.MW3/18 and Ex.MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex.MW3/21 was written by the bank in that regard. He had proved list of contractors as Ex.MW3/2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to her Smt. Bimla Madan gives re-affirmation to facts unfoled by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. She Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex.MW3/21. Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of her salaries to her. It was the Contractor who was her pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal

has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act., 1970 (in short the Contract Labour Act),which makes provisions for prohibition of employment of contract labour. For sake of convenience provision of section 10 of the Contract Labour Act are reproduced this:

"10. Prohibition of employment of contract labour:

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as they case may be, a State Board, prohibit by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as —

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade business, manufacture or occupation that is carried on in the establishment,
- (b) whether it is a perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation — if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (2001(7) S.C.C.I). The Apex Court rules therein that there cannot be automatic absorption of contract labour by principal employer or issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour out present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the court have held that the contract labour would indeed be employees of the principal employer."

25. The Court rules that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further rules therein that in Saraspur Mills case (1974(3) SCC66), the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgement in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract for work of the establishment under a genuine

contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vaccum Refining Co. of India Ltd. (1960 (II) LLJ. 233), which was referred with approval in Steel Authority of India.

27. In Shivnandan Sharma (1955(1) LLJ 688) the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the

effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, the precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an

establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case (1999 (6) S.C.C. 439) etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since she agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the steel Authority of India (*supra*) the Apex Court laid emphasis ".....the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of

contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962) (I) LLJ. 131), Shibu Metal Works (1966 (I) LLJ, 717), National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ. 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is: (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant

is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971 can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act."

34. In Gujarat Electricity Board (1995 (5) S.C.C. 27) the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to

adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
- (iv) Even after the contract system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujarat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a

contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However, the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who finds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by

the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and her colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and her colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex. MW3/1. Contents of clause 24 of Ex. MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and her colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex. MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex. MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex. MW3/1 it is projected that there is no privity of contract by the between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is

necessary to enable one persons to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex. MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration. "When at the desire of the promisor, the promisee or any other persons, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. There propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer constants of clause 15 of Ex. MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows".

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. MW3/1.

It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in the month, whether a contract labour worked on Sunday, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex. WW1/M4 to Ex. WW1/1M8 project total work days of the respective months for which the claimant worked, besides the number of days on which she remained on leave without pay. These documents project minimum rates of wages paid to her in a month, out of which deductions towards E.P.F and E.S.I subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao [1958 (II) LLJ 252] the Apex Court ruled that the concept of employment involves three ingredients : (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985 (II) LLI 4] justice Desai,

speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited [1957 (1) LLJ 477], the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje [1962 (1) LLJ 119], the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao [1970 (11) LLI 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a prior test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub-section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House [1973 (11) LLJ 495] the Apex Court ordained that "it is in its application

to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age."

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decessive factor, but it would be wrong to say that in every case it is a decessive factor. In Shining Tailors [1983 (11) LLJ 143], the Apex Court held that the piece rated workers working for a big tailoring establishment were workman for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A goldsmith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within a given time or earlier and engage themselves or others of their own were held to be independent contractors, in K. Keswa Raddiar [1957 (1) LLJ 645]. In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968 (1) LLJ 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab. I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990 (1) LLJ 50].

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the proces of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of

the University in respect of details of work of the claimant emerge out of contact agreement Ex. MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the university. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University."

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling her in respect of manner of doing the work. Power of the Contractor to replace the claimant from her work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the

Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change her, if not consented by the University. If the University decided to get her changed, for any reasons whatsoever, the Contractor could not impose her on the former, no matter her work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex. MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and her other 69 colleagues. Who used to mark attendance of the claimant and her colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised her work. Vacuum of facts in Ex. MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and her colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behavior or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and her associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex. MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex. MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW3/1, intention of the parties contained therein,

nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW3/1 is sham and bogus. There are realities of relationship of employer and employees between the University and the claimant and her other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex. MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and her colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and her colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex. MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and her colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services *w.e.f.* 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that she rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action

of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgement Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor her colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgement Ex. MW2/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgement, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of *Statyadhyana Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-judicata, it shall not be adjudged again. primarily it applies as between past litigation and future litigation. When a matter—wither on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again."

60. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

3. Such parties must have been litigating under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally

decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in *Mathura Prashad* (1970 (1) SSC 613). A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either - (a) a court of exclusive jurisdiction; or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Automobiles Ltd.* (1975 (II) LLJ. 445), wherein following principles were enunciated:

- (I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In Rajasthan State Road Transport Corporation (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Where the dispute arises from general law of contract, *i.e.* where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946- which can be called 'sister enactments' to Industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such Dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex-facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex-facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we

commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly - *i.e.* without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) This policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1, referred in Para 64, do not come into play. Therefore, judgement Ex. MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating her claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it *void ab initio*. Reference can be made to the

precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. [1993 (II) LLJ 174]. As detailed above retrenchment of the claimant is illegal and *void ab initio*. Issue is, therefore, answered in favour of the claimant and against the University.

Relief

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. Her services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. Her retrenchment was found to be *void ab initio*. She, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. She is deemed to be in the service of the University Question comes whether she is entitled to full back wages. For an answer in her favour, show was under an obligation to establish that she remained un-employed since the date of her retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that she remained unemployed. Since the date of dispensing with her services by the University. The Apex Court and High Courts deal with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future..... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc., would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above,

it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con."

68. A Divisional Bench of the Patna High Court in B. Choudhary (1993) Lab. 1.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable; (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age; (iv) Length of service in the establishment; (v) capacity of the employer to pay and the nature of the employer's business; (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab. I.C. 1887).

69. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one years salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty (1962 (I) LLJ 483) the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari (1986 (1) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab. I.C. 380), the Apex Court through confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab. I. C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back

wages. In Naval Kishor (1984 (1I) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (ii) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihar (1988 Lab. I.C. 107) a compensation of Rs. 65000/-was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab. I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years service to the University, when she was illegally retrenched. She had to fight for about four years for redressal of her grievances. The circumstances, in which she was retrenched and mass unemployment prevalent in economic field, which may come in the way when some one goes for an alternative employment, besides other factors of this case, persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV,
Presiding Officer

नई दिल्ली, 1 फरवरी, 2012

का०आ० 824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का (14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वाइस चांसलर, इन्दिरा गांधी नैशनल ओपन यूनिवर्सिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 05/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/02/2012 को प्राप्त हुआ था।

[फा० सं. एल-42012/95/2009-आईआर०(डी०य०)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 824.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 05/2010**) of the Central Government Industrial Tribunal cum Labour Court No.1 New Delhi as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman** which was received by the Central Government on 01.02.2012.

[F.No. L-42012/95/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE-B

BEFORE R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURT COMPLEX: DELHI

I.D. No.5/2010

Smt. Babita W/o Shri Ravinder Kumar
H.No. A 1st F\ 158, Mandangir,
New Delhi. Claimant

Versus

The Vice Chancellor,
Indira Gandhi National Open University,
R.No. 1, Block No. 8, Maidan Garhi,
New Delhi-110068 Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are out-sourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, *vide* order No. L-42012/95/2009-IR(DU) New Delhi dated 7th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Smt. Babita w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Smt. Babita claims in her claim statement that she was working with the University as "Safai Karamchari" in its housekeeping department since January 2006. She had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, she was asked to fill in certain forms, which forms duly filled and signed by her are in the custody of the University. No appointment letter was issued in her favour, inspite of her request in that behalf. Since inception of her engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning her service conditions. At times she, alongwith her colleagues, was kept at its rolls by the University, while during intermittent spells her services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount her continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from her wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from her but no compensatory leave or overtime wages were given to her. She used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place her services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to her. To her utter surprise a contractor surfaced on scene and told her and her colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and her colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to her and her colleagues at their hands. Police was lso called by the University authorities, to keep their hands clean.

The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to her. Her services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. She claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor. *vide* agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12 Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the

manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and her other colleagues. The claimant and her colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in her claim statement. It is pleaded that the claimant knew her status, being an employee of the Contractor. Her services were terminated by the Contractor and the University has no role to play in so called termination of her services. Her claim against the University is illegal, unwarranted and unjustified. It is pleaded that her claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined vide order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?

2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?

3. As in terms of reference.

4. Relief.

14. To discharge onus resting on her, the claimant examined herself and closed her evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant, Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein she swore that she was in the employment of the University as "Safai Karamchari" since January 2006. It has been projected in Ex.WW1/A that she rendered more than 240 days service with University. Except this new fact, other facts detailed in Ex.WW1/A are facsimile of contents of claim statement, which has been proved as Ex.WW1/M1. She candidly admitted her signatures on documents Ex.WW1/M2 to Ex.WW1/M9.

17. Smt. Bimla Madan unfolds that Regional Office of the Employers' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2645 was given to Smt. Babita, the employee of the above company. Name of Babita appears in statements of contributions Ex.MW1/1 and Ex.MW1/2, filed by her employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant Nos. 3 to 6,

affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgement dated 13.3.2009 passed by justice Ms. Rekha Sharma. These documents are proved as Ex.MW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgement Ex.MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex.MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to her. Services of the Contractor were availed to outsource housekeeping services vide agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when she was not engaged by the New Contractor, she alongwith her colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, she had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex.MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex.MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed facts which are inconsistent to each other. In her claim statement she projected a case that she was in the service of the University since April, 2006. In her cross-examination Ex.WW1/A she tried to assert that she was in the services of the University since November 2006. Self-serving words, deposited by the claimant, could not withstand rigors of cross-examination, wherein she admitted that Ex.WW1/M2, Ex.WW1/M3, Ex.WW1/M4, Ex.WW1/M5, Ex.WW1/M6, Ex.WW1/M7 and Ex.WW1/M8 bear her signatures. when perused it came to light that Ex.WW1/M4 to Ex.WW1/M8 are wage-sheets of the Contractor, though which salary of the claimant and her colleagues were released by the former in their favour. These documents project her to be employee of the Contractor. Thus by an admission of her signatures on above documents she allowed a fact to spill over, which demolishes her case of being an employee of the University. Ex.WW1/M2 and Ex.WW1/M3 are also photocopy of scrolls through which payments were released by the Contractor to the claimant and her colleagues. In the end she gave in and deposed that she was not aware as to who engaged her. However she made a faint attempt to project

her cause when she asserted that she used to work for the University. Conspectus of above facts spill the beans and announce her to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced vide agreement dated 1.11.2004, copy of which is Ex.MW3/1. This agreement was extended upto 31/10/2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, vide agreement Ex.MW3/2. When New Contractor did not engage the services of the claimant and her colleagues, they resorted to illegal demonstration in the premises of the University. The contractor used to raise his bills, to whom payments were made through cheques EX.MW3/5, Ex.MW3/6, Ex.MW3/7, Ex.MW3/8, Ex.MW3/9 and Ex.MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex.MW3/11, EX.MW3/12, Ex.MW3/13, Ex.MW3/14, Ex.MW3/15, Ex.MW3/16, Ex.MW3/17, Ex.MW3/18 and Ex.MW3/19 Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex.MW3/21 was written by the bank in that regard. He had proved list of contractors as Ex.MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to her. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex.MW3/21. Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of her salaries to her. It was the Contractor who was her pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of em[ployment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) (S.C.C.I)]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/

court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will

have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

27. In Shivandan Sharma [1955(1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashier, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor.

The apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case [1999

(6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since the agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (supra) the Apex Court laid emphasis ".....the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Section 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements

make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, this industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962(I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ 23] and Ghate and Patil (Transport) Pvt. Ltd. [1968(I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labours was ordered, thus:

"29.11. Judicial award have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These award also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971(2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of

loading and unloading from MAY 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971 Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provision of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

34. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the

dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujarat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. The Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved

as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules *viz.*, written instruments shall, if possible, be so interpreted "ut res migis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No Court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. the provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form association or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and her colleagues.

40. There is other facet of the coin. The Act is a

legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and her colleagues to act collectively as a body of men to protect their rights while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex.MW3/1, Contents of clause 24 of Ex.MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and her colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex. MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex. MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex. MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When ex.MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition,

referred above, cannot be given effect to.

43 "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promise or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration. "When at the desire of the promisor, the promisee or any other persons, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer constants of clause 15 of Ex. MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not

sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in the month, whether a contract labour worked on Sunday, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex. WW1/M4 to Ex. MWW1/M8 project total work days of the respective months for which the claimant worked, besides the number of days on which she remained on leave without pay. These documents project minimum rates of wages paid to her in a month, out of which deductions towards E.P.F and E.S.I subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above. I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao [1958 (ii) LLJ 252] the Apex Court ruled that the concept of employment involves three ingredients : (1) employer, (2) employee, and (3) the contract of employment. . The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985 (ii) LLJ 4] Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employs a

workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited [1957 (1) LLJ 477], the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje [1962 (1) LLJ 119], the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao [1970 (1) LLJ 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House [1973 (1) LLJ 495] the Apex Court ordained that "it is in its application to skilled and particularly professional work that control

test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age."

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it would be wrong to say that in every case it is a decisive factor. In Shining Tailors [1983 (11) LLJ 143], the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within a given time or earlier and engage themselves or others of their own were held to be independent contractors, in K. Keswa Raddiar [1957 (1) LLJ 645]. In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968 (1) LLJ 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab. I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990 (1) LLJ 50].

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work, Control test postulates a

combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex. MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the university. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling her in respect of manner of doing the work. Power of the Contractor to replace the claimant from her work place was made subject to permission

of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change her, if not consented by the University. If the University decided to get her changed, for any reasons whatsoever, the Contractor could not impose her on the former, no matter her work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex. MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and her other 69 colleagues. Who used to mark attendance of the claimant and her colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised her work. Vacuum of facts in Ex. MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and her colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behavior or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and her associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex. MW 3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will

of the parties to Ex. MW 3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW 3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW 3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and her other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex. MW 3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and her colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and her colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgment dated 13.3.2009 has been proved as Ex. MW 2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and her colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contrained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that she rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or

pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgement Ex. MW 2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor her colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgement Ex. MW 2/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgement, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of *Statyadhyana Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is judicata, it shall not be adjudged again. Primarily it applies as between part litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

3. Such parties must have been litigating under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in

which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on a issue of fact, however erroneous it may be, constitutes res judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either-(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in Premier Automobiles Ltd. [1975 (II) LLJ. 445], wherein following principles were enunciated:

- "(I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right

created under the Act such a Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In Rajasthan State Road Transport Corporation (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Where the dispute arises from general law of contract, *i.e.*, where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "Industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to Industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute Industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex-facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex-facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we

commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly—*i.e.*, without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claims and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of subsection (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1, referred in para 64, do not come into play. Therefore, judgement Ex. MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating her claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to precedents in Auro Engineering (Pvt.) Ltd., Nasik (1922 Lab. I.C. 1364) and Ollur Regional Imitation Diamond

Manufacturing Industrial Co-op Society Ltd. [1993 (II) LLJ 174]. As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is, therefore, answered in favour of the claimant and against the Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. Her services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. Her retrenchment was found to be void ab initio. She, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. She is deemed to be in the service of the University. Questions comes whether she is entitled to full back wages. For an answer in her favour, she was under an obligation to establish that she remained un-employed since the date of her retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that she remained unemployed, since the date of dispensing with her services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in futureIn computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct an estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C. 1887).

69. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sum to the workmen and her own earning in the alternative employment ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLI 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985

Lab.I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C. 107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab. I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous service of more than one year to the University, when she was illegally retrenched. She had to fight for about four years for redressal of her grievances. The circumstances, in which she was retrenched and mass unemployment prevalent in economic field, which may come in the way when some one goes for an alternative employment, besides other factors of this case, persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award, is accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated: 09.12.2011.

नई दिल्ली, 1 फरवरी, 2012

का०आ० 825.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्द्रिया गांधी नेशनल ओपन युनिवर्सिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 04/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.02.2012 को प्राप्त हुआ था।

[फॉ सं० एल०-42012/96/2009-आई० आर०(डी०य०)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 825.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 04/2010**) of the Central Government Industrial Tribunal cum Labour Court No. I, **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on **01.02.2012**.

[F. No. L-42012/96/2009-IR (DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1,
KARKARDOOMA COURTS COMPLEX: DELHI**

I.D. No. 4/2010

Smt. Saroj W/o Shri Ram Kumar
H.No. 125, Balmiki Basti,
Maidan Garhi,
New Delhi.

<i>Versus</i>	Claimant
The Vice Chancellor,	
Indira Gandhi National Open University,	
R. No. 1, Block No. 8, Maidan Garhi,	
New Delhi-110068.	Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only with in the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are out sourced by the university through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners restorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing

their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/96/2009-IR(DU) New Delhi dated 7th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Smt. Saroj w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Smt. Savita claims in her claim statement that she was working with the University as "Safai Karamchari" in its housekeeping department since 1998. She had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, she was asked to fill in certain forms, which forms duly filled and signed by her are in the custody of the University. No appointment letter was issued in her favour, inspite of her request in that behalf. Since inception of her engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning her service conditions. At times she, alongwith her colleagues, was kept at its rolls by the University, while during intermittent spells her services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount her continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from her wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from her but no compensatory leave or overtime wages were given to her. She used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November 2007, the University decided to place her services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to her. To her utter surprise a contractor surfaced on scene and told her and

her colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The claimant and her colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and other were terminated. The University called some anti-social elements and got sever beatings administered to her and her colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to her. Her services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. She claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, vide agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and condition of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the

University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and her othe collenagues. The claimant and her colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in her claim statement. It is pleaded that the claimant knew her status, being an employee of the Contractor. Her services were terminated by the Contractor and the University has no role to play in so called termination of her services. Her claim against the University is illegal, unwarranted and unjustified. It is pleaded that her claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined vide order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?

2. Whether the claimant was an employee of Sybex

Computer System Pvt. Ltd., the Contractor?

3. As in terms of reference.
4. Relief.

14. To discharge onus resting on her, the claimant examined herself and closed her evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein she swore that she was in the employment of the University as "Safai Karamchari" since 1998. It has been projected in Ex. WW1/A that she rendered more than 11 years service with the University. Other facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as Ex. WW1/M1. She candidly admitted her signatures on documents Ex. WW1/M2 to Ex. WW1/M8.

17. Smt. Bimla Madan unfolds that Regional Office of the Employers' Provident Fund organisation had given code number as DL-24878 to the Contractor, while code number 22120 was given to Smt. Saroj, the employee of the above company. Name of Saroj appears in statement of contributions Ex. MW1/1 and Ex. MW1/2, filed by her employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No.3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgment dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex. MW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgment Ex. MW2/5.

19. Dr. S.S. Bisht tendered has affidavit Ex. MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to her. Services of the Contractor were availed to outsource housekeeping services vide agreement dated

1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when she was not engaged by the New Contractor, she alongwith her colleagues resorted to illegal demonstration in the premises of the University. Story of filling Civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, she had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex. MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed facts which are inconsistent to each other. In her claim statement she projected a case that she was in the service of the University since 1998. In her affidavit Ex. WW1/A she had repeated those very facts as detailed in her claim statement. However in her cross-examination she gives a twist to facts deposing that she is serving the University since 2004. This discrepant fact was recklessly uttered by her. Her swearer does not find any corroboration from any other piece of evidence, direct or circumstantial. Self-serving words, deposited by the claimant, could not withstand rigors cross-examination, where in she admitted that Ex. WW1/M2, Ex. WW1/M3, Ex. WW1/M4, Ex. WW1/M5, Ex. WW1/M6, Ex. WW1/M7, and Ex. WW1/M8, bear her signatures. When perused it came to light that Ex. WW1/M4 to Ex. WW1/M8, are wage-sheets of the Contractor, though which salary of the claimant and her colleagues were released by the former in their favour. These documents project her to be an employee of the Contractor. Thus by an admission of her signatures on above documents she allowed a fact to spill over, which demolishes her case of being an employee of the University. Ex. WW1/M2, and Ex. WW1/M3, are also photocopy of scrolls through which payments were released by the Contractor to the claimant and her colleagues. In the end she gave in and deposed that she was not aware as to who engaged her. However she made a faint attempt to project her cause when she asserted that she used to work for the University. Conspectus of above facts spill the beans and announce her to be an employee of the Contractor.

22. Dr.S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced vide agreement dated 1.11.2004, copy of which is Ex. MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, vide agreement Ex.MW3/2. When New Contractor did not engage the services of the claimant and her colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex.MW3/5, Ex.MW3/6, Ex.MW3/7, Ex.MW3/8, Ex.MW3/9, and Ex.MW3/10, deposes the witness. Some of the bills raised by the contractor, besides sanction accorded by the University are Ex.MW3/11, Ex.MW3/12, Ex.MW3/13, Ex.MW3/14, Ex.MW3/15, Ex.MW3/16, Ex.MW3/17, Ex.MW3/18, and Ex.MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex.MW3/21, was written by the bank in that regard. He had proved list of contractors as Ex.MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to her. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filled by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex.MW3/21, Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of her salaries to her. It was the Contractor who was her pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), Which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board,

prohibit by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work in incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment.
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment.
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provision of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7)S.C.C.1]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"...they fall in three classes:(1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the

establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the service of the contractor, the court have held that the contract labour would indeed be employees of the principal employer."

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that nonissuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of

contract labour or other in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) LLJ. 233), which was referred with approval in Steel Authority of India.

27. In Shivnandan Sharma (1955(1) LLJ 688), the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control

over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case (1999)(6) S.C.C. 439) etc; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is

concluded that the claimant can maintain this dispute against the University since she agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer on an establishment from employing contractor labour in the establishment, when either it is not registered on its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of section 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis "...the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for

abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962 (I) LLJ. 131), Shibu Metal Works (1966 (I) LLJ. 717), National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour Vegoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into

force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act."

34. In Gujarat Electricity Board [1995 (5) S.C.C. 2] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section No. Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject

the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractors workmen and the adjudicator on the material placed before him can decide as to whom and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujarat electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under Section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be so interpreted

"ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either *contra bonos mores*, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are *contra bonos mores* for forbidden by law? When pursued, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1) (c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right insofar as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and her colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "Industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a

single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and her colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex.MW3/1. Contents of clause 24 of Ex.MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and her colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex.MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rest upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex.MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex.MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex.MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of contract. A nudum pactum, or agreement to do or pay something on one side, without

any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor, Section 2 of the Contract Act defines consideration: "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex. MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Providor, under this agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Providor for the effective operation of this Agreement, on the rates quoted by the Providor in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of ex. MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors

may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex. WW1/M4 to Ex. WW1/M8 project total work days of the respective months for which the claimant worked, besides the number of days on which she remained on leave without pay. These documents project minimum rates of wages paid to her in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao [1958 (II) LLI 252] the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employees, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985 (II) LLJ 4] Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them." Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited [1957 (1) LLI 477], the Apex Court ruled that test of "supervision

and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje [1962(1) LLJ 119], the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao [1970 (11) LLI 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House [1973 (11) LLI 495] the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it

would be wrong to say that in every case it is a decessive factor. In Shining Tailors [1983 (11) LLJ 143], the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A goldsmith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in K. Keswa Reddiar [1957 (1) LLJ 645]. In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968 (1) LLI 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad (1989 Lab. I.C. 1770). The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990 (1) LLI 50].

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex. MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care other disciplinary matters etc. who shall remain fully under the administrative and financial control and

supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However, an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling her in respect of manner of doing the work. Power of the Contractor to replace the claimant from her work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change her, if not consented by the University. If the University decided to get her changed,

for any reasons whatsoever, the Contractor could not impose her on the former, no matter her work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex. MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and her other 69 colleagues. Who used to mark attendance of the claimant and her colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the Contractor who supervised her work. Vacuum of facts in Ex. MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and her colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engraves acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behaviour or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and her associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex. MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex. MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and her other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex. MW3/1 is a

smoke-screen, which would not snap relationship between the University and the claimant and her colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and her colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex. MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and her colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act, No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services *w.e.f.* 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that she rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgment Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor her colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgement Ex. MW2/5 would not operate as *res-judicata* in the present controversy. Law contained in section 11 of the Code of

Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of *Statyadhyana Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a *res-is judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

60. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as *res-judicata* under section 11 of the Code, the following conditions must be satisfied:"

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.

2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.

3. Such parties must have been litigating under the same title in the former suit.

4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed Issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in *Mathura Prashad* [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res judicata, the court which decided that suit must have been either — (a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Automobiles Ltd.* [1975 (II) LLJ, 445,] wherein following principles were enunciated:

- "(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (ii) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No.2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In *Rajasthan State Road Transport Corporation* (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

- "(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis

of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to Industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex-facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex-facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly—*i.e.*, without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil

Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. An Industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of subsection (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1 referred in para 64 do not come into play. Therefore, judgment Ex MW2/5 cannot operate as *res-judicata*. It would not restrain the claimant in any manner, from agitating her claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void *ab initio*. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Limitation Diamond Manufacturing Industrial Co-op. Society Ltd. [1993 (II) LLI 174]. As detailed above, retrenchment of the claimant is illegal and void *ab initio*. Issue is, therefore, answered in favour of the claimant and against the University.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make belief contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. Her services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. Her retrenchment was found to be void *ab initio*. She, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. She is deemed to be in the service of the University Question comes whether she is entitled to full back wages. For an answer in her favour, she was under an obligation to establish that the remained unemployed

since the date of her retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that she remained unemployed, since the date of dispensing with her services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty [1957 (11) LLI 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits etc. would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefits of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, or course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B.Choudhary (1983) Lab.1.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab. I.C. 1887).

69. In Assam Oil Co. Ltd. [1960 (1) LLI 587] the Apex Court took into account countervailing facts that the

employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLI 398] the amount to compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration and unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970 (1) LLI 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty [1962 (II) LLI 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari (1986 (II) LLI 509), the Apex Court observed that it was a fair case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent of 3.33 years salary as reasonable. In M.K. Aggarwal [1988 Lab I.C. 380], the Apex Court though confirmed the order of reinstatement yet restricted the back salary of 50% of what would otherwise be payable to the employee. In Yashveer Singh [1993 Lab. I.C. 44] the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLI 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLI 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal [1985 Lab I.C. 1225] a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari [1988 Lab I.C. 107] a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao [1991 Lab I.C. 1650] a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years service to the University, when she was illegally retrenched. She has to fight for about four years for redressal of her grievances. The circumstances in which she was retrenched and mass unemployment prevalent in economic field which may come in the way when some one goes for an alternative employment, besides other factors of this case persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed, it be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 1 फरवरी, 2012

का०आ० 826.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चासलर, इन्ड्रा गांधी नेशनल ओपन यूनिवर्सिटी प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या-03/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/02/2012 प्राप्त हुआ था।

[फा० सं० एल-42012/97/2009-आई०आर०(डी०य०)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 826.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 03/2010**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on **01.02.2012**.

[F. No. L-42012/97/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI**

I.D. No. 3/2010

Shrimati Savita W/o Shri Suresh Kumar

H. No. F-2/188, Madangir,

New Delhi

Claimant

Versus

The Vice Chancellor,

Indira Gandhi National Open University,

R. No. 1, Block No. 8, Maidan Garhi,

New Delhi-110 068.

Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University function not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi which is spread over an area of 151.32 acres of land. At its Central Campus, the University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are outsourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November, 2007, the University awarded contract for housekeeping services to Spick and Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University. Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and a failure report was submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/97-2009-IR(DU) New Delhi dated 7th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University, in terminating the services of their workman Shrimati Savita w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Smt. Savita claims in her claim statement that she was working with the University as "Safai Karamchari" in its housekeeping department since 1.3.2005. She had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, she was asked to fill in certain forms, which forms duly filled and signed by her are in the custody of the University. No appointment letter was issued in her favour, inspite of her request in that behalf. Since inception of her engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws concerning her service conditions. At times she, alongwith her colleagues, was kept at its rolls by the University, while during intermittent spells her services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount her continuity in service.

and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefits under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from her wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from her but no compensatory leave or overtime wages were given to her. She used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per month.

6. On 1st November, 2007, the University decided to place her services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to her. To her utter surprise a contractor surfaced on scene and told her and her colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and others may leave for good. The Claimant and her colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to her and her colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

The University had not served one months notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to her. Her services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. She claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to be rejected, pleads the University.

9. To outsource housekeeping services, the University engaged services of the Contractor, vide agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus

of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similarly, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter not they should be allowed to join in any Association/forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and her other colleagues. The claimant and her colleagues resorted to illegal demonstration in the

University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in her claim statement. It is pleaded that the claimant knew her status, being an employee of the Contractor. Her services were terminated by the Contractor and the University has no role to play in so called termination of her services. Her claim against the University is illegal, unwarranted and unjustified. It is pleaded that her claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined vide order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?
2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?
3. As in terms of reference.
4. Relief.

14. To discharge onus resting on her, the claimant examined herself and closed her evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein she swore that she was in the employment of the University as "Safai Karamchari" since 01-06-1996. It has been projected in Ex. WW1/A that she rendered more than 11 years service with the University. Except this new fact, other facts detailed in Ex. WW1/A are facsimile of contents of claim statement, which has been proved as Ex. WW1/M1. During the course of her cross-examination, she concedes that she was appointed by one Dharmender, the Contractor. She candidly

admitted her signatures on documents Ex.WW1/M2 to Ex.WW1/M9.

17. Smt. Bimla Madan unfolds that Regional Office of the employers' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2398 was given to Smt. Savita, the employee of the above company. Name of Savita appears in statements of contributions Ex.MW1/1 and Ex.MW1/2, filed by her employer for the period 1.4.2005 to 31.3.2006 and 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant No.3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgment dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex.MW2/1 to MW2/5 respectively. He clarified that no appeal was preferred against the judgment Ex.MW2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex.MW3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No salary was ever paid to her. Services of the Contractor were availed to outsource housekeeping services vide agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when she was not engaged by the New Contractor, she alongwith her colleagues resorted to illegal demonstration in the premises of the University. Story of filing civil suit and orders thereon have been re-affirmed by Dr. Bisht. Being an employee of the Contractor, she had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex.MW4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex.MW3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed facts which are inconsistent to each other. In her claim statement she projected a case that she was in the service of the University since 1.3.2005. In her affidavit Ex. WW1/A she tried to assert that she was in the services of the University since 1.6.1996. This piece of her deposition is contrary to facts pleaded by her in claim statement Ex. WW1/M1. One cannot lead evidence on a fact which is

not pleaded. Even otherwise during the course of her cross-examination, she gave another twist to facts and proclaimed that initially she was appointed by one Dharmender, a Contractor. Prior to her engagement on muster roll by the University in the year 2004, she was an employee of the Contractor, deposes the claimant. Thus an another discrepant fact was recklessly uttered by her. This swinger does not find any corroboration from any other piece of evidence, direct or circumstantial. Self-serving words, deposed by the claimant, could not withstand rigors of cross-examination, wherein she admitted that Ex.WW1/M2, Ex.WW1/M3, Ex.WW1/M4, Ex.WW1/M5, Ex.WW1/M6, Ex.WW1/M7, Ex.WW1/M8 and Ex.WW1/M9 bear her signatures. When perused it came to light that Ex.WW1/M4 to Ex.WW1/M9 are wage-sheets of the Contractor, though which salary of the claimant and her colleagues were released by the former in their favour. These documents project her to be an employee of the Contractor. Thus by an admission of her signatures on above documents she allowed a fact to spill over, which demolishes her case of being an employee of the University. Ex.WW1/M2 and Ex.WW1/M3 are also photocopy of scrolls through which payments were released by the Contractor to the claimant and her colleagues. In the end she gave in and deposed that she was not aware as to who engaged her. However she made a faint attempt to project her cause when she asserted that she used to work for the University. Conspectus of above facts spill the beans and announce her to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced vide agreement dated 1.11.2004, copy of which is Ex.MW3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, vide agreement Ex.MW3/2. When New Contractor did not engage the services of the claimant and her colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex.MW3/5, Ex.MW3/6, Ex.MW3/7, Ex.MW3/8, Ex.MW3/9 and Ex.MW3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex.MW3/11, Ex.MW3/12, Ex.MW3/13, Ex.MW3/14, Ex.MW3/15, Ex.MW3/16, Ex.MW3/17, Ex.MW3/18 and Ex. MW3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex.MW3/21, was written by the bank in that regard. He had proved list of contractors as Ex.MW3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the

Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to her. Smt. Bimla Madan gives reaffirmation to facts unfolded by Dr. Bisht. She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex.MW3/21. Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of her salaries to her. It was the Contractor who was her pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as:—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I.] The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"..... they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in

any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employers. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (ii) L.L. 233], which was referred with approval in Steel Authority of India. has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of

the Contract Labour Act.

27. In Shivandan Sharma [1955 (1) LLI 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

“If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master.”

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

“Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill and continued employment. If he, for any reasons, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractors***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trapping of detachment from the management cannot snap the real-life bond. The story

may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management’s adventitious connections cannot ripen into real employment.”

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*supra*) it has been ruled that the term “contract labour” is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer though a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai’s case (*supra*) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the University since she agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer has violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of the Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence under the provisions of that Act. Section 9 places an embargo on the principal employer of an

establishment from employing contractor labour in the establishment, when either it is not registered to its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act of Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis “..... the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible”. The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLI. 131], Shibu Metal Works [1966 (I) LLI. 717], National Iron & Steel Co. [1967 (II) LLI. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLI. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

“29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the

factor; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of ‘middlemen’.”

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the Industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegolis Private Ltd. [1971 (2) S.C.C. 724] and the ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

“The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the directions of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act”.

34. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

“53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority of abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour

under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms”.

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujarat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as EX. MW3/1 by Dr. Bisht. In construction of contents of Ex. MW3/1, this Tribunal cannot be oblivious of the rules *viz.*, written instruments shall, if possible, be so interpreted “ut res magis valeat quam pereat” (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or

tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex. MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of Ex. MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and her colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts

restriction on the claimant and her colleagues to act collectively as a body of men to protect their rights, while working with the Contractor, who had engaged them to produce a given result in terms of agreement Ex. MW3/1. Contents of clause 24 of Ex. MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and her colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex. MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or in the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex. MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex. MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex. MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor. Section 2 of the Contract Act defines consideration: "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. These propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex. MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tender are as follows:"

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex. MW3/1 those rates are not detailed. Thus tender document becomes a part of Ex. MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex. MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rate quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex. MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contracts labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex. WW1/M4 to Ex. WW1/M9 project total work days of the respective months for which the claimant worked, besides the number of days on which she remained on leave without pay. These documents project minimum rates of wages paid to her in a month, out of which deductions towards E.P.F. and E.S.I. subscriptions were made. Bills raised by the Contractor and sanction accorded by the University are provide as Ex. MW3/11 to Ex. MW3/19. Cheques issued in favour of the Contractor are proved as Ex. MW3/5 to Ex. MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex. MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao [1958 (II) LLJ 252] the Apex Court ruled that the concept of employment involves three ingredients.: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985(II) LLJ4] Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contract employs a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited [1957 (1) LLJ 477], the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and

supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In *Shankar Balaji Waje* [1962(1) LLJ 119], the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In *V.P. Gopala Rao* [1970 (11) LLJ 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a prior test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In *Silver Jubilee Tailoring House* [1973 (11) LLJ 495] the Apex Court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it would be wrong to say that in every case it is a decisive factor. In *Shining Tailors* [1983 (11) LLJ 143], the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent

contractor. A gold smith engaged to finish jewels within a given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or others of their own were held to be independent contractors, in *K.Keswa Reddiar* [1957 (1) LLJ 645]. In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in *Achuta Achar* [1968 (1) LLJ 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in *Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad* (1989 Lab. I.C. 1770). The Tiney Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990 (1) LLJ 50].

51. As emerge out, element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical functions.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex. MW3/1? For an answer, a few clauses of Ex. MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Providers, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University."

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner of performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clause, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling her in respect of manner of doing the work. Power of the Contractor to replace the claimant from her work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change her, if not consented by the University. If the University decided to get her changed, for any reasons whatsoever, the Contractor could not impose her on the former, no matter her work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and her other 69 colleagues. Who used to mark attendance of the claimant and her colleagues Ex. MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the

Contractor who supervised her work. Vacuum of facts in Ex. MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and her colleagues.

55. Disciplinary control is exercised by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behaviour or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex. MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and her associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

56. Construction adopted on contents of Ex. MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex. MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex. MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex. MW3/1 is sham and bogus. There are realities of relationship of employer and employees between the University and the claimant and her other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex. MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and her colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and her colleagues, the New contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex. MW2/

5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the garb of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and her colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services w.e.f. 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that she rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof make the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the garb of awarding contract to housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgement Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties tell that neither the claimant nor her colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgment Ex. MW2/5 would not operate as res-judicata in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of *Statyadhyana Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is base on the need of giving a finality to judicial decision. What it says is that once a res-judicata, it shall not be adjudged again. Primarily it applies as between past litigation and

future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter agains."

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit was well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effects was laid in *Mathura Prashad* [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have

been either—(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in Premier Automobiles Ltd. [1975 (II) LLJ. 445], wherein following principles were enunciated:

- "(I) If the dispute is not an industrial dispute, no does it relate to enforcement of any other right under the Act the remedy lies only the in Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under.

64. In Rajasthan State road Transport Corporation (1995 Lab. I.C. 2241), the Apex Court analysed the earlier dicta and re-stated the law as follows:

"(1) Where the dispute arises from general law of contract, *i.e.*, where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "Industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance of enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the

recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2—A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse of Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conference upon the government is to be exercised to effectuate the object of the enactment and hence not unguided.

The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex-facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly—*i.e.*, without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provision". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The Policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they

can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. In industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of subsection (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1, referred in para 64, do not come into play. Therefore, judgment Ex. MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating her claim against the University.

66. It is well settled that negative language used in section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workmen. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void ab initio. Reference can be made to be precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C. 1364) and Ollur Regional Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. [1993 (II) LLI 174]. As detailed above, retrenchment of the claimant is illegal and void ab initio. Issue is, therefore answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. Her services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. Her retrenchment was found to be void an initio. She, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. She is deemed to be in the service of the University. Question comes whether she is entitled to full back wages. For an answer in her favour, she was under an obligation to establish that she remained un-employed since the date of her retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that she remained unemployed, since the date of dispensing with her services by the University. The Apex Court and High Courts dealt with the issue of award of compensation, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the

claimant. In S.S. Shetty [1957 (II) LLI 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in futureIn computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab. I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable; (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age; (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business; (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab. I.C.1887).

69. In Assam Oil Co. Ltd. [1960 (1) LLI 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal

Machinery Ltd. [1996] (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakraborty [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab. I.C. 380), the Apex court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab. I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kisor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab. I.C. 107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab. I.C. 1650) a compensation in Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous four years service to the University, when she was illegally retrenched. She had to fight for about four years for redressal of her grievances. The circumstances, in which she was retrenched and mass unemployment prevalent in economic field, which may come in the way when some one goes for an alternative employment, besides other factors of this case, persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of the claimant in the service of the University, with continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 1 फरवरी, 2012

का०आ० 827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाइस चांसलर, इन्दिरा गांधी नैशनल ओपन यूनिवर्सिटी प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 18/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-02-2012 को प्राप्त हुआ था

[फा० सं० एल-42012/102/2009-आईआर० (डी.यू.)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 1st February, 2012

S.O. 827.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 18/2010**) of the **Central Government Industrial Tribunal cum Labour Court No. I New Delhi** as shown in the Annexure, in the Industrial dispute between the **Vice Chancellor, Indira Gandhi National Open University and their workman**, which was received by the Central Government on **01.02.2012**.

[F.No. L-42012/102/2009-IR(DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR.R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1,
KARKARDOOMA COURTS COMPLEX: DELHI**

I.D. No. 18/2010
Shri Rahul S/o Shri Balbir Singh,
B-Block, Camp No. 2,
H.No. 114, JJ Colony,
Nangloi, New Delhi. Claimant

Versus

The Vice Chancellor,
Indira Gandhi National Open University,
R.No. 1, Block No. 8, Maidan Garhi,
New Delhi-110068 Management

AWARD

Indira Gandhi National Open University (herein after referred to as the University) was established in the year 1985 to provide cost effective and quality education to large sections of people, including those living in remote and far flung areas, through distance education programmes. The University functions not only within the boarders of the country but offers education programmes in at least 35 countries. Besides Regional Centres across the country and in foreign countries, the University has its Central Campus at Maidan Garhi, New Delhi, which is spread over an area of 151.32 acres of land. At its Central Campus, the

University has a strength of about 800 officers/officials working there.

2. The University requires considerable man-power to carry out housekeeping services, which includes cleaning and sanitation activities. Housekeeping services are outsourced by the University through a private contractor. In the year 2004, the University awarded contract for housekeeping services to Sybex Computer Systems (Pvt.) Ltd. (in short the Contractor). The Contractor engaged around 70 sweepers and cleaners to carry out its contractual obligations. On 1st November 2007, the University awarded contract for housekeeping services to Spick & Span Facilities Management (Pvt.) Ltd. (in short the New Contractor). Initially the New Contractor decided to retain services of the sweepers and cleaners engaged by the Contractor. But negotiations between the New Contractor and employees of the Contractor turned into a complete fiasco. Sweepers and cleaners resorted to agitation and sat on "dharna" outside the gate of Maidan Garhi Campus of the University Legal wrangle started between the University and the agitators. Efforts were made from either side to wrench one's opponent.

3. Resort to the jurisdiction of Conciliation Officer was taken by the sweepers and cleaners, by way of filing their respective claim statements. Conciliation Officer initiated conciliation proceedings, as contemplated by sub-section (1) of section 12 of the Industrial Disputes Act, 1947 (in short the Act). No settlement could arrive at between the parties and failure report, was submitted to the appropriate Government. On consideration of the failure report, so submitted to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, invoking its powers under clause (d) of sub-section (1) of section 10 of the Act, vide order No. L-42012/102/2009-IR(DU) New Delhi dated 28th January, 2010, with following terms:

"Whether the action of the management of Indira Gandhi National Open University in terminating the services of their workman Shri Rahul w.e.f. 01/11/2007 is legal and justified? If not, what relief the workman is entitled to?"

4. Shri Rahul claims in his claim statement that he was working with the University as "Safai Karamchari" in its housekeeping department since 1.05.2006. He had rendered more than 240 days continuous service with the University. At the time of entering into the services of the University, he was asked to fill in certain forms, which forms duly filled and signed by his are in the custody of the University. No appointment letter was issued in his favour, inspite of his request in that behalf. Since inception of his engagement, the University had indulged into unfair labour practices and flouted implementation of labour laws

concerning his service conditions. At time he, alongwith his colleagues, was kept at its rolls by the University, while during intermittent spells his services were transferred at the roll of one contractor or the other. This device was adopted with a view to discount his continuity in service and seniority in employment so that liability to pay retrenchment compensation under the Act and other benefit under various labours laws may be avoided.

5. Contributions towards social securities, namely, ESI, medical benefits and provided fund were deducted from his wages by the University, pleads the claimant. Despite payment of contributions towards above social securities, the University never issued any medical card and provident fund statement or account number, but passed on that responsibility on the shoulders of the Contractor. Facility of earned, annual, privileged, casual, weekly off, festival and medical leaves were not accorded. Though work was taken on Sundays and holidays from him but no compensatory leave or overtime wages were given to him. He used to get wages at the rate of Rs. 172/- per days, amounting to somewhere near to Rs. 4500/- per months.

6. On 1st November 2007, the University decided to place his services at the disposal of a contractor, whose engagement for housekeeping work was neither communicated nor he was introduced to him. To his utter surprise a contractor surfaced on scene and told him and his colleagues that he will pay them Rs. 3470/- each per month. He announced that interested persons may stay at work-place and other may leave for good. The claimant and his colleagues wanted to see the Vice-Chancellor to appraise him of their grievances, but they were stopped at the gate of the University campus. Services of the claimant and others were terminated. The University called some anti-social elements and got sever beatings administered to him and his colleagues at their hands. Police was also called by the University authorities, to keep their hands clean.

7. The University had not served one month notice nor paid wages in lieu of the notice. Retrenchment compensation was also not paid to him. His services were not done away on infliction of punishment for a disciplinary action, hence action of the University is violative of the provisions of the Act and principles of natural justice. He claims reinstatement in the services of the University with continuity and consequential benefits.

8. The University demurs the claim pleading that the claimant was never employed by it. No salary/wages or other emoluments were paid by it to the claimant. There existed no relationship of employer and employee between the parties. Hence there was no occasion for the University to terminate services of the claimant. In view of these facts, reference order is improper and claim statement is liable to

be rejected, pleads the University.

9. To outcome housekeeping services, the University engaged services of the Contractor, vide agreement dated 1.11.2004, which agreement was extended upto 31.10.2007. The claimant was working with the Contractor to provide housekeeping services at the campus of the University. The Contractor is essential and proper party, pleads the University. In agreement entered into between the Contractor and the University it was stipulated that employees of the Contractor at no point of time would be treated as employees of the University. The University laid emphasis on a few clauses of the agreement, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University as the frequent changes in deployment of temporary may hamper the day to day work of the University.

23. There is no privity of contract by and between the Provider and the University. The Temporary shall have no right to make any claim against the University directly or indirectly, monetary including wages or otherwise. The Temporary shall also have no right to claim for any regularization. The Temporary shall also have no claim against the University of any dues, statutory or otherwise. Similary, even the representative of any Temporary who have worked in the University shall have no right or claim against the University.

24. The Provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU.

25. The Provider has to ensure timely deployment of Temporaries as required by IGNOU and fulfil other obligation stated in the above said terms and conditions failing which penalty will be imposed by the University on case to case basis from time to time. The decision of the University will be final."

10. When contract, referred above, expired with efflux

of time, contract for housekeeping services was awarded to the New Contractor, who initially sought to retain the services of housekeeping staff for his own contract. However, owing to illegal and unjustified demands of the housekeeping staff, the New Contractor did not engage the claimant and his other colleagues. The claimant and his colleagues resorted to illegal demonstration in the University premises. A civil suit being CS(OS) No. 83 of 2008 was instituted before High Court of Delhi. The High Court passed an interim injunction order on 15.1.2008 against the housekeeping staff and ultimately decreed the suit on 13.3.2009.

11. The University had denied all allegations levelled by the claimant in his claim statement. It is pleaded that the claimant knew his status, being an employee of the Contractor. His services were terminated by the Contractor and the University has no role to play in so called termination of his services. His claim against the University is illegal, unwarranted and unjustified. It is pleaded that his claim may be dismissed.

12. An application moved by the University, to implead the Contractor as a party, was declined vide order dated 20.4.2010.

13. On pleadings of the parties, following issues were settled:

1. Whether there was relationship of employer and employee between the claimant and the management?
2. Whether the claimant was an employee of Sybex Computer System Pvt. Ltd., the Contractor?
3. As in tems of reference.
4. Relief.

14. To discharge onus resting on him, the claimant examined himself and close his evidence. The University examined Smt. Bimla Madan, Shri Shiv Prakash, Dr. S.S. Bisht and Shri Ashok Kumar Gupta to substantiate its case.

15. Arguments were heard at the bar at length. Shri V.N. Kaushik, assisted by Ms. Sulekha Thakur, authorised representative, advanced arguments on behalf of the claimant. Shri V.K. Rao, assisted by Shri Aly Mirza, authorised representative and Vibhas Vaibhav, Asstt. Registrar (Law), raised submissions on behalf of the University. I have given my careful considerations to the submissions made at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1 & 2.

16. Affidavit Ex. WW1/A was tendered as evidence on behalf of the claimant, wherein he sweared that he was in the employment of the University as "Safai Karamchari"

since 1.05.2008. It has been projected in Ex. WW1/A that he rendered more than 240 days service with the University. Other facts detailed in Ex. WW1/A are fascimile of contents of claim statement, which has been proved as Ex. WW1/M1. He candidly admitted his signatures on documents Ex. WW1/M2 to Ex. WW1/M8.

17. Smt. Bimla Madam unfolds that Regional Office of the Employers' Provident Fund Organisation had given code number as DL-24878 to the Contractor, while code number 2725 was given to Shri Rahul, the employee of the above company. Name of Rahul appears in statements of contributions Ex. MW1/1 and Ex. MW1/2, filed by his employer for the period 1.4.2006 to 31.3.2007 respectively.

18. Shri Shiv Prakash entered the witness box to prove copy of plaint, filed by the University before High Court of Delhi, written statement of defendant Nos. 3 to 6, affidavit of Shri U.S. Tolia tendered as evidence in that case, interim order dated 15.1.2008 and judgment dated 13.3.2009 passed by Justice Ms. Rekha Sharma. These documents are proved as Ex. MW 2/1 to Ex. MW 2/5 respectively. He clarified that no appeal was preferred against the judgment Ex. WW 2/5.

19. Dr. S.S. Bisht tendered his affidavit Ex. MW 3/A as evidence, wherein he announced that the claimant was never appointed by the University in its services. No. salary was ever paid to him. Services of the Contractor were availed to outsource housekeeping services *vide* agreement dated 1.11.2004, which was subsequently extended upto 31.10.2007. The claimant was working with the Contractor. With effect from 1.11.2007 contract to provide housekeeping services was awarded to the New Contractor. He projects that when he was not engaged by the New Contractor, he alongwith his colleagues resorted to illegal demonstration in the premises of the University. Story of filling civil suit and orders thereon have been reaffirmed by Dr. Bisht. Being an employee of the Contractor, he had filed a wrong claim statement, which is liable to be dismissed, asserts Dr. Bisht.

20. Shri Ashok Kumar Gupta details that the University was maintaining an account with Maidan Garhi branch of the Punjab National Bank. The University had issued cheques in favour of the Contractor, details of those cheques are given in Ex. MW 4/A. He identifies signatures of Shri Mohan Lal, Branch Manager, on Ex. MW 3/21 and announces that contents of that document are true and correct, as he himself had checked the records.

21. When facts testified by the claimant, Smt. Bimla Madan, Dr. S.S. Bisht and Ashok Kumar Gupta are appreciated, it came to light that the claimant had detailed

that he was in the service of the University since 1.5.2006. Self-serving words, deposited by the claimant, could not withstand rigors of cross-examination, wherein he admitted that Ex. WW 1/M2, Ex. WW 1/M3, Ex. WW 1/M4 Ex. WW 1/M5, Ex. WW 1/M6, Ex. WW 1/M7, and Ex. WW 1/M8 are wage-sheets of the Contractor, though which salary of the claimant and his colleagues were released by the former in their favour. These documents project him to be an employee of the Contractor. Thus by an admission of his signatures on above documents he allowed a fact to spill over, which demolishes his case of being an employee of the University. Ex. WW 1/M2 is also photocopy of scrols through which payments were released by the Contractor to the claimant and his colleagues. In the end he gave in and deposed that he was not aware as to who engaged him. However he made a faint attempt to project his cause when he asserted that he used to work for the University. Conspectus of above facts spill the beans and announce him to be an employee of the Contractor.

22. Dr. S.S. Bisht erected castle for the University brick by brick when he deposed that the claimant was working with the Contractor, whom housekeeping services were outsourced *vide* agreement dated 1.11.2004, copy of which is Ex. MW 3/1. This agreement was extended upto 31.10.2007. When aforesaid contract expired, contract for housekeeping services was awarded to the New Contractor, *vide* agreement Ex. MW 3/2. When New Contractor did not engage to services of the claimant and his colleagues, they resorted to illegal demonstration in the premises of the University. The Contractor used to raise his bills, to whom payments were made through cheques Ex. MW 3/5, Ex. MW 3/6, Ex. MW 3/7, Ex. MW 3/8, Ex. MW 3/ and Ex. MW 3/10, deposes the witness. Some of the bills raised by the Contractor, besides sanction accorded by the University are Ex. MW 3/11, Ex. MW 3/12, Ex. MW 3/13, Ex. MW 3/14, Ex. MW 3/15, Ex. MW 3/16, Ex. MW 3/17, Ex. MW 3/18 and Ex. MW 3/19, Dr. Bisht detailed. Payments were made to the Contractor through cheques, which were honoured and cleared and letter Ex. MW 3/21 was written by the bank in that regard. He had proved list of contractors as Ex. WW 3/W2, to whom the work was awarded by the University since 16.12.1991 till date. Out of facts unfolded by Dr. Bisht it came over the record that the University had outsourced housekeeping services since 16.12.1991. On 1.11.2004 work was awarded to the Contractor and on 1.11.2007 it was awarded to the New Contractor. Claimant was an employee of the Contractor, who used to pay wages to him. Smt. Bimla Madan gives re-affirmation to facts unfolded by Dr. Bisht

She had proved statements of contribution, filed by the Contractor in the Regional Office of the Employees' Provident Fund Organisation, in which statements name of the claimant does appear as an employee of the Contractor. Shri Ashok Kumar Gupta proves various payments made by the University to the Contractor, details of which are enlisted in Ex. MW 3/21. Sequences of events, brought over the record through the depositions of aforesaid witnesses and documents proved by them, highlight that the claimant was an employee of the Contractor, who used to make payment of his salaries to him. It was the Contractor who was his pay master.

23. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the University? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in the Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation— if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

24. As emerge out of the provisions of sub-section (1) of section 10 of the Contractor Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court rules therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer."

25. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) S.C.C. 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills AIR 1964 S.C. 355)

a canteen was run in the factor by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court rules that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

26. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein, Thus it was rule that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (ii) LLJ. 233], which was referred with approval in Steel Authority of India.

27. In Shivnandan Sharma [1955(1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job

and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

28. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was not direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, through draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contacts is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above this precedent does not present an illustration of abolition of contract labour but an instance

where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

29. In Steel Authority of India (*Supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's (*supra*) and in Indian Petrochemicals Corporation case [1999(6) S.C.C.439] etc.; if the answer is in affirmative, the workman will be in fact an employees of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the university since he agitates that the contract agreement between the University and the Contractor is sham and nominal.

30. whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and a accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of the Act or Rules made thereunder penal.

In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

31. In the Steel Authority of India (*supra*) the Apex Court laid emphasis ".....the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

32. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the University? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. 1962 (I) LLJ. 131], Shibu Metal Works (1966 (I) LLJ. 717), National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968(I) LLJ. 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

33. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, If it becomes necessary. The observations made by the Court are extracted thus:

"The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside ***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act."

34. In Gujarat Electricity Board (1995 (5) S.C.C. 27) the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator, It would be appropriate to reproduce the observation of the court this:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. It, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workers to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether

the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the excontractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

35. In Steel Authority of India (*supra*) the Apex Court had referred the precedents in Vegoils case (*supra*) and Gujarat Electricity Board (*supra*) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

36. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the University and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW3/1 by Dr. Bisht. In construction of contents of Ex.MW3/1, this tribunal cannot be oblivious of the rules *viz.*, written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

37. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing

obligations alleged to arise out of a contract or transaction which is illegal.

38. Whether Ex.MW3/1 contains clauses which are contra bonos mores or forbidden by law? When perused, clause 24 of Ex.MW3/1 makes it clear that right to form or join an association, in respect of IGNOU matter, has been denied to an employee of the Contractor. For sake of convenience contents of that clause are reproduced thus:

"24. The provider has to ensure that the Temporaries deployed are not forming any Association/Forum in respect of IGNOU matter nor they should be allowed to join in any Association/Forum of IGNOU."

39. Right to form associations or unions is a fundamental right guaranteed to every citizen by clause (1)(c) of Article 19 of the Constitution of India. Guarantee of right to form an association or union has to be read with clause (4) of the aforesaid Article, which permits imposition of legal restrictions on the right in so far as such restrictions may be reasonably required in the interest of the sovereignty and integrity of India, public order and morality. The right to form associations or unions refers not only to the initial commencement of the association but also to continuation of the association as such, as it is obvious that if an association has to be dissolved the moment it has been formed, it cannot be said that the members have the right to form the association. The restriction imposed by the University on employees of the Contractor does not answer the requirement of clause (4) of Article 19 of the Constitution and is violative of the fundamental right guaranteed to the claimant and his colleagues.

40. There is other facet of the coin. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy is implicit in the definition of "industrial dispute". See Titagarh Jute Co. Ltd. (1979 Lab. I.C. 513). "An agreement between a single employer or an association of employers on one hand and a labour union on the other, which regulates the terms and conditions of employment" is known as collective bargaining agreement. The policy behind the concept of collective bargaining is to protect workmen as a Class against unfair labour practices. A dispute of an individual workman would acquire status of an industrial dispute if it affects the rights of the workmen as a class. An industrial dispute denotes two qualities which distinguish it from an individual dispute, namely (i) that the dispute relates to industrial matter, and (ii) that on one side atleast of the dispute the disputant are a body of men acting collectively and not individually. The clause, referred above, puts restriction on the claimant and his colleagues to act collectively as a body of men to protect their rights, while

working with the contractor, who had engaged them to produce a given result in terms of agreement Ex.MW3/1. Contents of clause 24 of Ex.MW3/1, being unlawful, cannot be supported at law.

41. A restriction is imposed on the claimant and his colleagues from making any claim against the University directly or indirectly, monetary including wages or otherwise as contained in clause 23 of Ex.MW3/1, which is not in conformity with the provisions of the Contract Labour Act. Primary responsibility to pay wages to an employee employed by a contractor rests upon the latter. But on his failure to make payment of wages within the prescribed period or the event of making short payment, the principal employer has been saddled with the responsibility to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, enacts sub-section (4) of section 21 of the Contract Labour Act. Consequently this part of clause 23 of Ex.MW3/1 is to be discarded, being violative of law.

42. In mercantile transactions stipulations are agreed upon between the parties on principal to principal or principal to agent basis. In both the propositions there is privity of contract between them. Absence of privity of contract would make them strangers to each other, in respect of alleged covenanted or parol agreement, as the case may be. In clause 23 of Ex.MW3/1 it is projected that there is no privity of contract by and between the Provider (the Contractor) and the University. The proposition referred above is absurd. Privity of contract is the relation which exists between the immediate parties to a contract, which is necessary to enable one person to sue another on it. It is a relationship between persons arising under a contract. There may be (1) privity of contract, or (2) privity of estate. When Ex.MW3/1 is read, privity of contract between the contractor and the University emerge out. Proposition, referred above, cannot be given effect to.

43. "Consideration" of some sort or other is so necessary to the formation of a contract. A nudum pactum, or agreement to do or pay something on one side, without any consideration on the other, will not at all support any action, and a man cannot be compelled to perform it. To constitute consideration, there must be an act, abstinence or promise on the part of promisee or some other person at the desire of the promisor. A consideration must be valuable and not superficial, it must be material and not sentimental or imaginary. It must be a material detriment to the promisee or a benefit to the promisor, Section 2 of the Contract Act defines consideration: "when at the desire of the promisor, the promisee or any other person, has done or abstained from doing, or does or abstains from doing something, such act or abstinence or promise is called a consideration for the promise".

44. The consideration for a promise must have some tangible value in the eye of law. Its adequacy is not material. Though adequacy of consideration will not be examined by the courts, yet it must not be colourable merely nor illusory. A mere moral obligation arising from a past benefit not conferred at the request of the defendant is not a good consideration. However consideration derived from moral obligations, in which there has been a legal right deprived of legal remedy, the defendant would be held liable, without putting moral duty at par with legal consideration. There propositions may require a court or a tribunal to examine whether there was legal consideration for the promise.

45. Whether there is any legal consideration for the promise made by the Contractor to the University? For an answer contents of clause 15 of Ex.MW3/1 are to be examined, which are extracted thus:

"15. In consideration of the obligation undertaken by the Provider, under this Agreement, the University shall pay Provider charges on the basis of number of such personnel actually deployed by the Provider for the effective operation of this Agreement, on the rates quoted by the Provider in Their Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi). The rates mentioned in Tenders are as follows."

46. As detailed above charges on the basis of number of personnel deployed on the rates quoted by the Contractor in Tender based on the direction and guidelines issued by the Local Government (NCT of Delhi) where to be paid to him by the University. In Ex.MW3/1 those rates are not details. Thus tender document becomes a part of Ex.MW3/1. It has not been placed before the Tribunal. As detailed above, adequacy of consideration, may prove to be beyond the pale of jurisdiction of a civil court. But this Tribunal has to examine adequacy of consideration to ascertain as to whether Ex.MW3/1 is genuine and not sham and nominal. The Tribunal is supposed to examine as to whether the charges on the basis of number of personnel deployed on rates quoted in tender document project minimum wages to be paid to contract labours, besides remunerations derived by the Contractor. Assessment of these factors may enable the Tribunal to reach a conclusion whether the Contractor had put his hands to Ex.MW3/1 on principal to principal or agent to principal basis. Absence of tender document created a vacuum. Parol evidence was brought on record to the effect as to what payments were made to the Contractor from time to time. But absence of facts, as to what were the rates of minimum wages, what number of contract labours worked in a particular month, on how many days in a month a contract labour worked, whether overtime work was performed by a contract labour in that month, whether a contract labour worked on Sundays, holidays and weekly off days in a month, would leave the Tribunal in lurch.

47. Wages sheet Ex.WW1/M4 to Ex.WW1/M8 project total work days of the respective months for which the claimant worked, besides the number of days on which he remained on leave without pay. These documents project minimum rates of wages paid to him in month, out of which deductions towards E.P.F. and E.S.I. subscription were made. Bills raised by the Contractor and sanction accorded by the University are proved as Ex.MW3/11 to Ex.MW3/19. Cheques issued in favour of the Contractor are proved as Ex.MW3/5 to Ex.MW3/10. Despite my best efforts to reconcile contents of documents referred above, I could not work out the rates on which the Contractor was paid by the University for services rendered by him. Thus adequacy of consideration for services rendered by the Contractor has not surfaced over the record. Vacuum of evidence in that regard made me to comment that the University could not establish factors in favour of genuineness of contract agreement Ex.MW3/1.

48. Now it would be seen whether it was the Contractor who exercised his control or supervision on the claimant? Factors of such control and supervision were described in various precedents, which would be noted herein under. In Chintaman Rao [1958(II)LLI 252] the Apex Court ruled that the concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, that is, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In Food Corporation of India [1985(II)LLI 4] Justice Desai, speaking for the Apex Court, announced that a contract of employment "discloses a relationship of command and obedience between them". Where a Contractor employees a workman to do the work which he contracted with a third person to accomplish, the workman of the Contractor would not without something more become the workman of third person.

49. In Dharangadhara Chemical Works Limited [1957 (1) LLI 447], the Apex Court ruled that test of "supervision and control may be taken as the *prima facie* test for determining the relationship of employment". It was further laid that existence of the right in the master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work is the *prima facie* test for determining the existence of master and servant relationship. It was suggested that correct method of approach, would be to consider whether having regard to the nature of work there was due control and supervision by the employer. The greater amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. The control and

supervision test was reaffirmed by the Apex Court in Chintaman Rao (*supra*), wherein it was ruled that "worker" was a person employed by the management and there must be contract of service and a relationship of master and servant between them. In Shankar Balaji Waje [1962 (1) LLI 119], the Apex Court clarified that "control of the management, which is a necessary element of the relationship of master and servant is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In V.P. Gopala Rao [1970 (11) LLI 59], the Apex Court said that it is the question of fact in each case whether the relationship of master and servant exists between the management and the workman and there is no abstract a priori test of the work control required for establishing the contract of service. It was laid therein that for holding that the persons employed in the factory were workers within the meaning of sub section (1) of section (2) of the Factories Act 1948, it is to be considered that the fact that the workman had to work in the factory implied certain amount of supervision by the management and the nature and extent of control varied in different industries and that when the operation was of a simple nature, the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. It is, therefore, not surprising that in recent years, the control test, as traditionally formulated, has not been treated as an exclusive test. In Silver Jubilee Tailoring House [1973 (11) LLI 495] the Apex court ordained that "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting "control" as meaning the power to direct how the servant should do the work, the court has been applying the concept suited to a past age".

50. During the last three decades emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be a decisive factor, but it would be wrong to say that in every case it is a decisive factor. In Shining Tailors [1983 (11) LLI 143], the Apex Court held that the piece rated workers working for a big tailoring establishment were workmen for the establishment. It was observed therein that the "right of removal of the workman or not to give work as an element of control and supervision" which was amply satisfied to announce that those piece rated workers were the workmen for the establishment. The Court concluded that the proposition that "piece rate" itself indicates relationship of independent contract, is not correct. A servant who has full liberty to attend to his work according to his pleasure and not according to orders of his master, is an independent contractor. A goldsmith engaged to finish jewels within a

given time and when it was open to such goldsmith to finish jewels within the given time or earlier and engage themselves or other of their own were held to be independent contractors, in K. Keswa Reddiar [1957 (1) LLI 645]. In the like manner a goldsmith who undertook the manufacture of ornaments like other goldsmith which he was asked to manufacture and was entitled to receive remuneration which would depend upon the nature of the work done, was held to be not under the order or control of the proprietor of the concern for whom he was doing the work, in Achuta Achar [1968 (1) LLI 500]. An agreement for selling milk on commission was held to be a contract for service and not a contract of service, in Abad Dairy Doodh Vitran Kendra Sanchalak Mandal, Ahmedabad [1989 Lab.I.C.1770]. The Tiny Deposit Agents employed in deposit mobilization activity of the bank have been held to be falling within the definition of the workman and not an independent contractor in the precedent in the Management of Indian Bank [1990 (1) LLI 50].

51. As emerge out element of control or supervision of employer in respect of detail of work would be an identifying mark of the servant. Where an employer retains the power, not only of directing what work is to be done but also of controlling the manner of doing the work, these factors would be determinative of his status as of a master. His control is not directed towards providing or dictating the nature of work to be done but refers to other incidents having a bearing on the process of work the person carries out in the execution of the work. Control test postulates a combination of managerial and technical function.

52. Whether elements of control or supervision of the University in respect of details of work of the claimant emerge out of contract agreement Ex.MW3/1 ? For an answer, a few clauses of Ex.MW3/1 are to be scanned, which are extracted thus:

"12. Provider shall continue to be responsible for the personnel employed by him, in respect of terms and conditions of their service, payments, attendance, medical care, other disciplinary matters etc. who shall remain fully under the administrative and financial control and supervision of the Provider, except that the University shall be the sole Arbitrator in respect of nature of the duties to be entrusted to and the manner of performance of their duties for the purpose of this Agreement.

13. The temporary personnel deployed by the Provider to IGNOU shall at no time be treated as the employees of the University and also shall have no claim to be regularized in the services of the University. But the Provider will not change the personnel once deployed by it in the University without prior permission of the University, as the frequent changes in deployment of temporary may hamper the day to day work of the University.

14. The Provider shall have to change over or replace the temporary personnel as and when required by the University whether or not such personnel are found guilty of any misconduct. It shall not be necessary for the University to assign any reason to the Provider or the concerned Person or any other person in respect of any such change and replacement required by the University".

53. As projected above, clause 12 announces that personnel employed by the Contractor shall remain fully under the administrative and financial control and supervision of the Contractor. However an exception is there to this general proposition to the effect that the University shall be sole arbitrator in respect of nature of duties to be entrusted to and the manner performance of their duties for the purpose of the agreement under consideration. Another exception is contained in clause 13 wherein the Contractor has been constrained not to change the personnel once deployed without prior permission of the University. Further exception is contained in clause 14 wherein the Contractor is obliged to change or replace the temporary personnel as and when required by the University. The factors enumerated in the clauses, referred above, make it apparent that the University retained the power, not only of directing what work was to be done by the claimant, but also of controlling him in respect of manner of doing the work. Power of the Contractor to replace the claimant from his work place was made subject to permission of the University. Despite the choice of the Contractor to replace the claimant he could not do so, in case University showed its unwillingness in that regard. Contra to it, the Contractor was duty bound to change an employee if so commanded by the University. Such a proposition was not dependent on a contingency of the employee being found guilty of any misconduct. Mere wish of the University was to prevail in the matter. Thus it is crystal clear that the University retained power of allocation of duties, besides right to control the manner of performance of such duties by the claimant. The claimant was to work with the University till its pleasure. The Contractor could not exercise his earnest will to change him, if not consented by the University. If the University decided to get him changed, for any reasons whatsoever, the contractor could not impose him on the former, no matter his work and conduct were satisfactory. Conspectus of these elements make it clear that administrative control on the claimant was with the University and not with the Contractor.

54. Contract agreement Ex.MW3/1 does not contain any obligation on the part of the Contractor to supervise the work of the claimant. No clause is there in the document to show that the Contractor deployed some personnel to supervise the work of the claimant and his other 69 colleagues. Who used to mark attendance of the claimant and his colleagues Ex.MW3/1 draws a blank? No parol evidence was brought in to suggest that it was the

Contractor who supervised his work. Vacuum of facts in Ex.MW3/1 and conspicuous absence of any ocular evidence in that regard leave no doubt to conclude that it were the University authorities who used to supervise the work of the claimant and his colleagues.

55. Disciplinary control is exercise by an employer on his employees by way of codifying rules of conduct for them. He engrafts acts of misconduct in those rules. He punishes his employees for their blameworthy conduct. It is so done by him with a view to maintain discipline at the work place and to deter potential delinquent from doing improper behaviour or to come in conflict with rules of standard of behaviour. Right to coin an act as an improper behaviour, falling within the ambit of misconduct, was retained by the University. It has been detailed in clause 22 of Ex.MW3/1 that "the University shall be sole judge as to what is against the interest of the University and as to what constitutes misconduct". This authority to define a behaviour to be a misconduct for a contract employee projects that the University had clothed itself with a right to declare a code of conduct for the claimant and his associates. This right is an attribute of disciplinary control exercised by an employer on his employees.

Construction adopted on contents of Ex.MW3/1 is based on the standards of presumed intent of parties. The construction, so put, with an idea to preserve the will of the parties to Ex.MW3/1. It is the duty of a court or tribunal to give effect to the intention of the parties in construing a written instrument. Ascertaining general scope of Ex.MW3/1, intention of the parties contained therein, nature of the instrument and legal right of the parties thereto, it is concluded that efforts were made by the University to hide the truth with a view to project a make-believe instrument of engaging personnel through the Contractor. In fact the University retained administrative and disciplinary control over the contract employees. When veil was lifted, it emerged that Ex.MW3/1 is sham and bogus. There are realties of relationship of employer and employees between the University and the claimant and his other 69 colleagues. In view of the forgoing reasons, it is concluded that the veil of Ex.MW3/1 is a smoke-screen, which would not snap relationship between the University and the claimant and his colleagues. Aforesaid two issues are accordingly answered.

Issue No. 3

57. Dr. S.S. Bisth announces that with effect from 1.11.2007 contract for providing housekeeping services was given to the New Contractor. He asserts that owing to illegal demands of the claimant and his colleagues, the New Contractor did not engage them. Thereafter housekeeping staff, including the claimant, resorted to illegal

demonstration. A suit of injunction was filed, which was decreed by the High Court of Delhi. Certified copy of judgement dated 13.3.2009 has been proved as Ex.MW2/5, by Shri Shiv Prakash.

58. Whether above facts would espouse the cause of the University? Answer lies in negative. As held above, the claimant was an employee of the University, which proposition restrains the University from awarding housekeeping services to the New Contractor. In the grab of award of housekeeping services to the New Contractor, the University dispensed with the services of the claimant and his colleagues. Action of the University squarely falls within the ambit of definition of retrenchment, as contained in sub-section (oo) of section 2 of the Act. No case was projected that the case of University falls within the exceptions, contained therein. Therefore, it is crystal clear that the action of the University amounts to retrenchment. As per own admission of the University, the claimant rendered services *w.e.f.* 1.11.2004 till 31.10.2007, as an employee of the Contractor. Thus it is clear that he rendered continuous service of more than 240 days in a calendar year, as contemplated by section 25-B of the Act. When an employee renders services of more than one year, he is entitled to protection/benefits contained in section 25-F of the Act. Out of facts of the present controversy, it emerges that services of the claimant were done away in violation of the provisions of section 25-F of the Act. It is not the case of the University that one month's notice or pay in lieu thereof and retrenchment compensation was paid to the claimant and other similarly situated employees. Requirements contained in section 25-F of the Act are mandatory and non-compliance thereof makes the action of the employer illegal. Hence action of the University in terminating services of the claimant, in the grab of awarding contract of housekeeping services to the New Contractor, is illegal and unjustified.

59. Whether judgement Ex. MW2/5 would come to the rescue of the University? Answer lies in negative. Memo of parties till that neither the claimant nor his colleagues were party to that suit. The suit was filed in respect of a cause of action of civil nature. Even otherwise judgement Ex. MW2/5 would not operate as *res-judicata* in the present controversy. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of *res-judicata* or the rule of conclusiveness of a judgement, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of *res-judicata* has been explained in the simplest possible manner by Das

Gupta J. in the case of *Statyadhyan Chosal* (AIR 1960 S.C. 941) in the following words:

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res-is-judicata, it shall not be adjudged again. Primarily it applies as between past-litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again".

60. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

61. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however, erroneous it may be, constitutes res-judicata between the parties to the previous suit and cannot be re-agitated in collateral proceedings. Law to this effect was laid in *Mathrua Prashad* [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

62. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit will not operate as res-judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for

deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either — (a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogous to res-judicata are applicable.

63. Now it would be considered as to whether the High Court is competent to try on industrial dispute, relating to rights and liabilities created under the Act. Such proposition was raised before the Apex Court in *Premier Automobilies Ltd.* [1975 (II) LLI. 445], wherein following principles were enunciated.

- (I) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (II) If the dispute is an industrial dispute arising out of a right or liability under general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suiter concerned to choose his remedy for relief which is competent to be granted in a particular remedy.
- (III) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suiter is to get an adjudication under the Act.
- (IV) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for enforcement is either section 33-C or the raising of an industrial dispute, as the case may be."

However, in relation to Principle No. 2, the Court added that "there will hardly be a dispute which will be an "industrial dispute" within the meaning of section 2(k) of the Act and yet will be arising out of a right or liability under the general or common law only and not under the Act".

64. In *Rajasthan State Road Transport Corporation* (1995 Lab. I.C. 2241), the apex Court analysed the earlier dicta and re-stated the law as follow:

"(1) Where the dispute arises from general law of contract, i.e., where relief are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946—which can be called 'sister enactments' to Industrial Disputes Act—and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forum created by the industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex-facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly—*i.e.*, without the requirement of a reference by the Government—in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and

un-encumbered by the plethora of procedural laws and appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute".

Same view was taken by the Apex Court in Steel Authority of India (*supra*).

65. Facts detailed in preceding sections make out that the rights which the claimant claim and obligations which are imposed on the University arise out of rights and obligations created by the Act. An industrial dispute within the meaning of section 2(k) was referred for adjudication by the appropriate Government to this Tribunal, invoking its powers under clause (d) of subsection (1) of section 10 of the Act. High Court is not competent to adjudicate an industrial dispute. Hence, Principle 2, referred in para 63 and Principle 1 referred in para 64 do not come into play. Therefore, judgment Ex. MW2/5 cannot operate as res-judicata. It would not restrain the claimant in any manner, from agitating his claim against the University.

66. It is well settled that negative language used section 25-F of the Act imposes a mandatory duty on the employer, which is condition precedent to retrenchment of a workman. Contravention of mandatory requirements of section 25-F of the Act would invalidate the retrenchment and render it void *ab initio*. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. I.C., 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op.Society Ltd. [1993 (II) LLI 174]. As detailed above, retrenchment of the claimant is illegal and void *ab initio*. Issue is, therefore, answered in favour of the claimant and against the University.

Relief.

67. As concluded above, the claimant was engaged by the University through the Contractor by way of creation of make believe contract agreement, which was a perfect paper arrangement. On lifting of veil, the University was found to be the real employer. His services were disengaged under the garb of award of housekeeping service agreement to the New Contractor. His retrenchment was found to be void *ab initio*. He, being an employee of the University cannot be retrenched by the Contractor or the New Contractor. He is deemed to be in the service of the University Question comes whether he is entitled to full back wages. For an answer in his favour, he was under an obligation to establish that he remained un-employed since the date of his retrenchment. No evidence has been adduced by the claimant on that point. Thus it cannot be said that he remained unemployed, since the date of dispensing with his services by the University. The Apex Court and High Courts dealt with the issue of award of compensation,

when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of back wages, which may be awarded to the claimant. In S.S. Shetty [1957 (11) LLI 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of furture awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

68. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation *viz.* (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii)

circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C.1887).

69. In Assam Oil Co.Ltd. [1960 (i) LLI 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal machinery Ltd. [1966 (1) LLI 398] the amount of compensation equivalent to two years salary of the employee awarded by the industrial Tribunal was reduced by the Supereme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970 (1) LLI 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLI 483] the Count converted the award of reinstatement into compensation of a sum of Rs.50000/-as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLI 509], the Apex Court observed that is was a fit case for grant compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab. I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages . In Naval Kishor [1984 (II) LLI 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLI 19] a sum of Rs. 2 lac awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab. I.C. 107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

70. The claimant rendered continuous one year service to the University, when he was illegally retrenched. He had to fight for about four years for redressal of his grievances. The circumstances in which he was retrenched and mass unemployment prevalent in economic filed which may come in the way when some one goes for an alternative employment, besides other factors of this case persuade me to award 20 percent back wages from the date of retrenchment till the date the award becomes operative under section 17-A of the Act, besides reinstatement of

the claimant in the service of the University, which continuity and all consequential benefits. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated: 09.12.2011

नई दिल्ली, 3 फरवरी, 2012

का०आ० 828.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस०सी०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 27/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-02-2012 को प्राप्त हुआ था।

[फा०सं० एल-22012/89/2006-आई आर (सीएम-II)]
डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 3rd February, 2012

S.O. 828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (*Ref. No. 27/2007*) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad* as shown in the Annexure, in the Industrial Dispute between the management of Singareni Collieries Company Limited, and their workmen, received by the Central Government on 03/02/2012.

[F.No. L-22012/89/2006-IR(CM-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

PRESENT:

Shri Ved Prakash Gaur : Presiding Officer
Dated the 19th day of December, 2011
INDUSTRIAL DISPUTE No. 27/2007

BETWEEN:

The General Secretary,
Singareni Collieries Workers Union (AITUC)
Kothagudem, Khammam District. .. **PTITIONER**

AND

The General Manager (Per),
M/s. Singareni Collieries Company Ltd.,
Manuguru,
District Khammam. **RESPONDENT**

APPEARANCES:

For the Petitioner: M/s P. Sridhar Rao, Advocate

For the Respondent: Sri S.M. Subhani, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/89/2006-IR(CM-II) dated 10.4.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the management of M/s. SCCL in not giving promotion to Shri K. Laxmaiah in Cat. IV w.e.f. 01.06.1980 and accordingly subsequent promotions is legal and justified? If not, to what relief is the concerned workman is entitled and from which date?"

The reference is numbered in this Tribunal as I.D. No. 27/2007 and notices were issued to the parties.

2. Petitioner called absent for several occasions from first date of hearing. The case is fixed for filing of claim statement and documents on 19.12.2011. Petitioner called absent. He has not filed claim statement for more than four years as such, the reference is answered in negative. In absence of claim statement, a Nil Award is passed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 19th day of December, 2011.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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Nil	Nil
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 फरवरी, 2012

का०आ० 829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस०सी०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 34/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2012 को प्राप्त हुआ था।

[फासं एल-22012/44/2004-आई आर (सीएम-II)]
डॉ॰एस॰एस॰ श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 3rd February, 2012

S.O. 829.—In pursuance of Section 17 of the Industrial Disputes Act, 1974 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 34/2005 of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad* as shown in the Annexure, in the industrial dispute between the management of *Singareni Collieries Company Limited*, and their workmen, received by the Central Government on 03/02/2012.

[File No. L-22012/44/2004-IR (CM-II)]
(D.S.S. SRINIVASARAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

PRESENT: Shri VED PRAKADH GAUR,
Presiding Officer

Dated the 27th day of December, 2011

INDUSTRIAL DISPUTE No. 34/2005

BETWEEN:

The General Secretary,
(Sri Bandari Satyanarayana),
Singareni Collieries Employees
Council (INTUC), BCH 30, Vittal Nagar,
Godavarikhani-505209.Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Division,
Godavarikhani-505209.Respondent

APPEARANCES:

For the Petitioner : M/s A. Sarojana, K. Vasudeva
Reddy & Purnachandar Rao,
advocates

For the Respondent: M/s P.A.V.V.S. Sarma & P.
Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/44/2004-IR(CM. II) dated 18.2.2005 referred the following dispute under section 10(1) (d) of

the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

THE SCHEDULE

"Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Division, Godavarikhani in not providing the Conveyor Operator Cat. V job as per the designation to Sri Chiluka Rajaiah is legal and justified? If not, to what relief the workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 34/2005 and notices were issued to the parties.

2. Petitioner filed claim statement stating therein that he was appointed on 15.8.1975 and later promoted as conveyor operator in category-IV and further Category-V w.e.f. 1.1.1997. While so, a proceeding was issued to him transferring to GDK-1 incline. Against which he submitted representation to utilize his services as Conveyor Operator or instead transfer his back to CSP-1 GDK which was not considered by the Respondent. Hence, he has prayed this Tribunal to direct the Respondent to engage the service of the workman as Conveyor Operator Category-V.

3. Counter statement has been filed by the management stating therein that Petitioner was transferred on administrative grounds to GDK No. 1 incline. He was entrusted with the duties of Conveyor Operator and he was paid the wages of Conveyor Operator. Workman has opted for voluntary retirement scheme on 1.11.2003, as such, he was not on the rolls of the Respondent when this reference was made to this Tribunal. Hence, the present dispute be closed as no merits.

4. The case is fixed for evidence of workman, workman requested adjournments for several times. Finally on 27.12.2011, counsel for workman stated that Petitioner has sought voluntary retirement, he does not want to proceed with this case, as such, in light of statement of Learned Counsel or the workman, the petition shall be dismissed without any relief to workman. Accordingly, Petitioner is not entitled for any relief. Hence, this award. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 27th day of December, 2011.

Ved Prakash Gaur, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 फरवरी, 2012

का०आ० 830.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधितंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 53/ 2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 03-02-2012 को प्राप्त हुआ था

[फा० सं एल-22013/1/2012-आई आर (सी-II)]
डॉ.एस.एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 3rd February, 2012

S.O. 830.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/53/2009) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 03.02.2012.

[F. No. L-22013/1/2012-IR(C-II)]
D.S.S.SRINIVASARAO, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**

PRESENT: Shri Ved Prakash Gaur
Presiding Officer

Dated the 19th day of January, 2012

INDUSTRIAL DISPUTE L.C.No. 53/2009

BETWEEN:

Sri Ramancha Bhadraiah,
S/O Lingaiah,
R/o H.No. 2-8-29, Ambedkar Colony,
5th Ward, Jammikunta Town and Mandal. **Petitioner**

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramakrishnapur, Adilabad district.
2. The Managing Director, (Administration),
M/s. Singareni Collieries Company Ltd.,
Post Kothagudem. Khammam district. **Respondents**

APPEARANCES:

- For the Petitioner: Shri S. Bhagwanth Rao,
Advocate
- For the Respondent: Sri Seshukumar Reddy,
Advocate

AWARD

This petition under Sec.2A (2) of the I.D. Act, 1947 has been filed by Sri Ramancha bhadraiah, ex-Badli filler to set aside the termination order dated 10.8.1999 and to reinstate the Petitioner workman with full back wages.

2. It is alleged by the Petitioner that Petitioner was appointed by Respondent on 14.10.1986 and discharged his duties to the full satisfaction of superiors upto removal from service on 10.8.1999. while so, Petitioner suffered from duodenum ulcer from 1.7.1998 to 13.7.1998 and also from 2.1.1998 to 21.1.1998 and from 15.7.1998 to 2.8.1998. He submitted medical certificates from 5.1.1997 to 6.9.1999 by Medical Officer, P.H.C., Kamalapur which were not received by respondent. An ex-partे enquiry was conducted against the Petitioner and Respondent dismissed Petitioner from his services arbitrarily, illegally against the principles of natural justice. During course of employment, Petitioner's right eye also got damaged and he was declared unfit earlier for underground work, due to which management with pre-meditate intention dismissed the case of Petitioner. There was no response to his representation for reinstatement. Hence, it is prayed that the dismissal order issued by Respondent dated 10.8.1999 be declared as illegal and arbitrary and set aside the same consequently directing the Respondents to reinstate the Petitioner into service with all consequential benefits.

3. Management has submitted his reply alleging therein that Petitioner remained absent for the year 1996 which hampered the working of the company, the absence of the Petitioner was without any sufficient cause which is grave misconduct within the Standing Orders 25.25 of the company and dismissal is not bad in **the light of the case law Reported in 1996(1) SCC 302 State of U.P. and others Vs. Ashok Kumar Singh.** Petitioner was appointed in the services of the Respondent company as badli filler on 14.10.1986 and he got confirmed as coal filler w.e.f. 1.1.1995. Petitioner had put in 115 musters in the year 1995, 107 musters in 1996, 67 musters during 1997, 76 days in 1998 and 11 days upto 30.6.1999 in the year 1999. He remained absent for the rest of days in the year 1998 as

such, he was issued with charge sheet dated 15.2.1999 for his unauthorized absenteeism during the year 1998. Petitioner acknowledged the receipt of charge sheet but did not submit any explanation to the charge sheet hence, enquiry was ordered. Due notices were given to the Petitioner to participate in the enquiry proceeding through registered post with acknowledgement due. Accordingly Petitioner participated in the enquiry and accepted the charges of unauthorized absence and copy enquiry report was also provided to the Petitioner. As coal filler, Petitioner has to put in 190 minimum musters per year which he did not put in. disciplinary Authority on considering enquiry proceeding, enquiry report and representation of Petitioner decided to impose punishment of dismissal from service, accordingly his services were dismissed *vide* office order dated 10.8.1999 with immediate effect. Petitioner did not produce any sickness proof, thus he failed to produce any documentary evidence before the Enquiry Officer. He intentionally absented himself without any reason or cause. The company has provided medical facilities by establishing hospitals, the Petitioner did not report to the company hospital for his sickness thus, his submission that he was absent due to ill-health is unfounded. Enquiry Officer has given his finding on the basis of material placed before him by the management and no fault can be find in the enquiry report, it is based on evidence and Petitioner's dismissal order is not disproportionate to the misconduct committed by him since Petitioner was not regular to his duties company has dismissed him which is neither illegal nor invalid. Hence, the petition be dismissed.

4. Parties were directed to produce documentary evidence in support of their claims. Petitioner has filed xerox copies of explanation dated 25.12.2008, dismissal order, representation of the Petitioner and original medical fitness certificate and Form-A. Respondent has filed office copies of charge sheet, enquiry notices, entire domestic enquiry proceedings file, enquiry report, show cause notice issued to him, its acknowledgement and dismissal order.

5. Before deciding the question of legality and validity of dismissal order, the legality and validity of domestic enquiry conducted by the management was considered first. Petitioner has not challenged the legality of the domestic enquiry as such, case is fixed for arguments under Sec. 11A of the Industrial Disputes Act, 1947, Petitioner's counsel called absent and heard argument of Respondent.

6. I have gone through the claim statement, counter statement, documents of the both parties and arguments of the Respondent.

7. It is admitted fact that the Petitioner remained absent during the year 1998 for which a charge sheet was issued to the Petitioner, he acknowledged the receipt of charge sheet. It is also admitted that domestic enquiry was conducted and Petitioner participated in the domestic

enquiry. On the basis of the report submitted by the Enquiry Officer dismissal order has been passed against the Petitioner which is under challenge.

8. This tribunal has to consider the following points:

- (1) Whether the absence of Petitioner during the year 1998 was for any sufficient and reasonable cause or not and the report of Enquiry Officer is based on evidence or not?
- (2) Whether the punishment imposed upon the Petitioner is disproportionate to the misconduct committed by the Petitioner?

9. Point No. 1: The Petitioner has submitted that he fell sick and suffered from duodenum ulcer during the year 1998 due to which he remained absent. He has filed before this Tribunal Form-A certificate of Government medical Attendant *w.e.f.* 5.1.1997 to 6.9.99 for restoration of Petitioner's health and medical fitness certificate dated 6.9.99 certifying that Petitioner is fit for duty from 7.9.99. He has not been able to provide any single piece of paper before Enquiry Officer to substantiate his allegations. More over, he has not mentioned from where he took treatment. He simply stated in his claim petition that his health condition was not good due to which he remained absent during the year 1998. He did not raise any objection against Respondent evidence during enquiry or produced any material in support of his absence before the Enquiry Officer. Simply he claims for reinstatement without producing any documentary or material evidence to substantiate his claim. The management has produced Sri R. Prasada Rao, O.S., to prove that Petitioner remained absent without any leave or without any intimation during the year 1998 and had put in only 76 musters in 1998. Since absence of the Petitioner was admitted by the Petitioner himself through his explanation to charge sheet and acceptance before the Enquiry Officer, it was the sole duty of the Petitioner to prove that his absence was due to any cogent reason or sufficient cause. Petitioner was unable to prove that his absence during the year 1998 was due to sufficient reason. Though he stated that he was absent due to ill-health but he did not provide any documentary or material in support of his illness. Even if it is presumed that Petitioner remained absent due to the ill-health why he did not inform his superiors regarding his illness has not been explained by the Petitioner. Thus, the finding of the Enquiry Officer that Petitioner's absence during the year 1998 was not for valid or reasonable cause is based on evidence. Regarding medical certificates produced before this Tribunal, it is evident from the perusal of the order sheet that Petitioner remained absent and did not turn up to challenge the legality and validity enquiry which was held to be legal and valid in absence of his challenge and he also remained absent on later dates. He did not explain this Tribunal why he has not produced the medical certificates either before management or before the Enquiry

Officer as such, it is held that the finding of the Enquiry Officer was based on evidence and reasoning and no fault can be find in the finding of the Enquiry Officer.

10. This tribunal is also of the opinion that the Petitioner remained absent without any intimation to his employer during the year 1998, his absence was without any reasonable or sufficient cause and thereby the Petitioner has committed misconduct mentioned in para 25.25 of the Standing Orders of the company. Point No. 1 is decided accordingly.

11. **Point No.2:** So far as the question of punishment is concerned the Petitioner has not been able to justify his absence during the year 1998, he has voluntarily admitted in his explanation to charge sheet that he remained absent during 1998. Respondent management has stated in the counter statement that Petitioner remained absent during the years 1995 and 1997 but it was not mentioned in the charge sheet. As such, the previous absence can not be taken into consideration but the absence during the entire year 1998 is surely a grave misconduct and management has not committed any mistake in passing the punishment of dismissal against the Petitioner. Petitioner appear to be unwilling worker who has not cared to perform his duties with sincerity as such, the punishment was proper and interference is not required in this case.

12. I agree with the argument of the Learned Counsel for the Respondent and I am also of the considered opinion that the punishment imposed on the Petitioner is neither excessive nor disproportionate, Petitioner is not a deserving person for any lenient view to be taken in favour of the Petitioner hence, no interference is required in the matter of the punishment. Point No. 2 is decided accordingly.

12. From the above discussion, this tribunal is of the considered opinion that the claim petition is unfounded, no interference is required in this case. Petitioner is not entitled for any relief, petition deserves to be dismissed and it is dismissed. Hence, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, personal Assistant transcribed by her corrected by me on this the 19th day of January, 2012.

Ved Prakash Gaur, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 फरवरी, 2012

का०आ० 831.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14), की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 111/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2012 प्राप्त हुआ था।

[फास० एल-22013/1/2012-आई आर (सी-II)]

डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 3rd February, 2012

S.O. 831.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/ LCID/111/2007)** as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of **SCCL** and their workmen, which was received by the Central Government on 03.02.2012.

[F.No. L-22013/1/2012-IR(C-II)]

D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Shri Ved Prakash Gaur**
Presiding Officer

Dated the 19th day of January, 2012

INDUSTRIAL DISPUTE L.C. No. 111/2007

BETWEEN:

Sri Kandula Mallesham,
S/o Peddulu,
R/o Lingapoor Village,
Ramagundam Mandal,
Dist: Khammam.

.....Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam Area I,
Godavarikhani. Karimnagar district.
2. The Managing Director,

M/s. Singareni Collieries Company Ltd.,
Kothagudem. Khammam district.**Respondents**

APPEARANCES:

For the Petitioner: Sri S. Bhagwanth Rao, Advocate

For the Respondent : Sri S.M. Subhani, Advocate

AWARD

This petition under Sec. 2 A (2) of the I.D. Act, 1947 has been filed by Sri Kandula Mallesham, ex-badli filler to set aside the termination order dated 30.3.1998 and to reinstate the Petitioner workman with full back wages.

2. It is alleged by the Petitioner that Petitioner was appointed by Respondent on 3.12.1994 and discharged his duties to the fullest satisfaction of superiors upto removal from service dated 30.3.1998. Petitioner served the company from 1994 to 1997. Respondent conducted enquiry against the Petitioner for misconduct and dismissed the Petitioner from service arbitrarily, illegally against the principles of natural justice. Respondent obtained signatures on white paper without explaining the contents mentioned therein. There was no response to his representation for reinstatement. Hence, it is prayed that the dismissal order issued by Respondent dated 29.3.1998 be declared as illegal and arbitrary and set aside the same consequently directing the Respondents to reinstate the Petitioner into service with all consequential benefits.

3. Management has submitted his reply alleging therein that Petitioner remained absent for the year 1996 which hampered the working of the company, the absence of the Petitioner was without any sufficient cause which is grave misconduct within the Standing Orders 25.25 of the company and dismissal is not bad in **the light of the case law reported in 1996(1) SCC 302 State of U.P. and others Vs. Ashok Kumar Singh.** Petitioner was appointed in the services of the Respondent company on 2.12.1994. Petitioner had put in 74 musters in the year 1995, 40 musters in 1996 and 51 musters during 1997. He remained absent for the rest of days in the year 1996 as such, he was issued with a charge sheet dated 1.10.1997 for his unauthorized absenteeism during the year 1996. Petitioner acknowledged the receipt of charge sheet and has submitted his explanation to the charge sheet dated 26.10.1997 which was found unsatisfactory as such, enquiry was ordered. Due notices were given to the Petitioner to participate in the enquiry proceeding through registered post acknowledgement due which returned undelivered, enquiry notice was published in local Telugu Daily News Paper 'Vaartha' on 2.1.1998 informing the Petitioner to appear on 6.1.1998. Neither Petitioner attended the enquiry nor he has sent any communication informing his inability to attend for the enquiry as such, *ex parte* enquiry was conducted on 6.1.1998 and he was found guilty of the charges. Enquiry report was also provided to the petitioner. Disciplinary

Authority on considering enquiry proceeding, enquiry report and representation of Petitioner decided to impose punishment of dismissal from service, accordingly his services were dismissed *w.e.f.* 30.3.1998 *vide* order dated 29.3.1998 Petitioner did not produce any sickness proof, thus he failed to produce any documentary evidence before the Enquiry Officer. He intentionally absented himself without any reason or cause. The company has provided medical facilities by establishing hospitals, the Petitioner did not report to the company hospital for his sickness thus, his submission that he was absent due to ill-health is unfounded, Enquiry Officer has given his finding on the material placed before him by the management and no fault can be find in the enquiry report, it is based on evidence and Petitioner's dismissal order is not disproportionate to the misconduct committed by him since Petitioner was not regular to his duties company has dismissed him which is neither illegal nor invalid. Hence, the petitioner be dismissed.

4. Parties were directed to produce documentary evidence in support of their claims. Petitioner has filed xerox copies of dismissal order dated 29.3.1998 representation of the Petitioner and original medical attendance book. Respondent has filed office copies of charge sheet, acknowledgement of charge sheet, explanation to charge sheet dated 26.10.1996, enquiry notices, paper publication, entire domestic enquiry proceedings file, enquiry report, show cause notice issued to him, its acknowledgement and dismissal order.

5. Coming to the point of the legality and validity of domestic enquiry conducted by the management it is pertinent to mention that as the Petitioner has not challenged the legality of the domestic enquiry, case is fixed for arguments under Sec. 11A of the Industrial Disputes Act, 1947, Petitioner's counsel called absent and heard argument of Respondent.

6. It appears that Petitioner is not interested to proceed with the case. However, I have gone through the claim statement, counter statement, documents of the both parties and arguments of the Respondent.

7. It is admitted fact that the Petitioner remained absent during the year 1996 for which a charge sheet was issued to the Petitioner, he acknowledged the receipt of charge sheet. It is also admitted that domestic enquiry was conducted and Petitioner did not participate in the domestic enquiry. On the basis of the report submitted by the Enquiry Office dismissal order has been passed against the Petitioner which is under challenge.

8. This tribunal has to consider the following points:

1. Whether the absence of Petitioner during the years 1996 was for any sufficient and reasonable cause or not and the report of Enquiry Officer is based on evidence or not?

2. Whether the punishment imposed upon the Petitioner is disproportionate to the misconduct committed by the Petitioner?

9. Point No. 1: The Petitioner has submitted that he fell sick during the year 1996 due to which he remained absent. He has filed before this Tribunal medical attendance book which pertains to the year 1996 and it shows the sickness of his wife by name Swaroopa in the year 1996 only but, it is not clear whether Petitioner was sick or not. He has not been able to provide any single piece of paper even before this Tribunal to substantiate his allegations. Moreover, he has not mentioned what was the cause of his ill-health and from where he took treatment. He simply stated in his claim petition that his health condition was not good due to which he remained absent during the year 1996. He did not raise any objection before Respondent for conducting ex parte enquiry or explained any genuine reason for his non-attendance to the enquiry proceedings. This shows that he was well aware of the enquiry proceeding. He simply claims for reinstatement without producing any documentary or material evidence to substantiate his absence. The management has produced Sri K. Aga Rao, O.S., and Sri C. Srihari, Paysheet Clerk to prove that Petitioner remained absent without any leave or without any intimation during the year 1996 and had put in only 40 musters in 1996. Since absence of the Petitioner was admitted by the Petitioner himself through his explanation to charge sheet it was the sole duty of the Petitioner to prove that his absence was due to any cogent reason or sufficient cause. Petitioner was unable to provide that his absence during the year 1996 was due to sufficient reason and more over he remained absent for enquiry proceeding. Though he stated that he was absent due to ill-health but he has not been able to provide any evidence or material in support of his illness. Even if it is presumed that Petitioner remained absent due to the ill-health why he did not informed his superiors regarding his illness has not been explained by the Petitioner. Thus, the finding of the Enquiry Officer that Petitioner's absence during the year 1996 was based on evidence and reasoning and no fault can be find in the finding arrived at by the Enquiry Officer.

10. This tribunal is also of the opinion that the Petitioner remained absent without any intimation to his employer during the year 1996, his absence was without any reasonable or sufficient cause and thereby the Petitioner has committed misconduct mentioned in para 25.25 of the Standing Orders of the company. Point No. 1 is decided accordingly.

11. Point No. 2: So far as the question of punishment is concerned the Petitioner has not been able to justify his absence during the year 1996, he has voluntarily admitted in his explanation to charge she that he remained absent during 1996 and though the Respondent management has stated in the counter statement that Petitioner remained

absent during the years 1995 and 1997 but it was not mentioned in the charge sheet. As such, the previous absence can not be taken into consideration but the absence during the entire year 1996 is surely a grave misconduct and management has not committed any mistake in passing the punishment of dismissal against the Petitioner. Petitioner has alleged that his family is starving due to dismissal of the Petitioner against which Learned Counsel for the Respondent has argued that Petitioner himself is responsible for the starvation of the family members, the Petitioner was an unwilling worker who has not cared to perform his duties with sincerity as such, the punishment was proper and interference is not required in this case.

12. I agree with the argument of the Learned Counsel for the Respondent and I am also of the considered opinion that the punishment imposed on the Petitioner is neither excessive nor disproportionate and Petitioner is not a deserving person for any lenient view to be taken in favour of the Petitioner. The Petitioner himself is responsible for the starvation of his family members, no interference is required in the matter of the punishment. Point No. 2 is decided accordingly.

13. From the above discussion, this tribunal is of the considered opinion that the claim petition is unfounded, no interference is required in this case. Petitioner is not entitled for any relief, petition deserves to be dismissed and it is dismissed. Hence, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal, Assistant transcribed by her corrected by me on this the 19th day of January, 2012.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examined for the Witnesses examined for the

Petitioner

Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 फरवरी, 2012

कांआ० 832.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी

संख्या 10/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2012 को प्राप्त हुआ था।

[फा० सं० एल-22013/1/2012-आई आर (सी-II)]
डी० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 3rd February, 2012

S.O. 832.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/10/2009)** as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on **03.02.2012**.

[F. No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASARAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: **Shri Ved Prakash Gaur**
Presiding Officer

Dated the 20th day of January, 2012

INDUSTRIAL DISPUTE L.C. No. 10/2009

BETWEEN:

Sri Orugonda Shanker,
S/o Venkati,
Q.No. KD-146, Krishna Colony,
Srirampur, Adilabad District.Petitioner

AND

1. The Chairman and Managing Director,
M/s Singareni Collieries Company Ltd.,
Bupalpally, Warangal District
2. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
KTK 5 Incline,
Bhupalpally, Waranagal District.Respondents

APPEARANCES:

For the Petitioner	:	M/s. Venkateshwar Varanasi and G. Ravi, Advocates
For the Respondent	:	M/s. P.A.V.V.S. Sarma and P. Vijaya Lakshmi, Advocates

AWARD

This petition under Sec. 2 A(2) of the I.D. Act, 1947 was filed by Sri Orugonda Shanker, Ex. General Mazdoor of M/s. Singareni Collieries Company Ltd., against the management challenging the order of his dismissal dated 24.3.2009 to quash the said order and reinstate him with back wages.

2. It has been alleged by the Petitioner that he was appointed as badli filler on 29.7.2002 in GDK 6 incline RG-1 under dependent employment quota and thereafter transferred to GDK 11 incline in the year 2004 and got promoted as coal filler in November, 2008. Then, he was transferred to Bhoopalapalli. He discharged his duties sincerely till removal from his services. A charge sheet dated 17.3.2008 was issued to him alleging that he remained absent without leave or sufficient cause during 2007. Petitioner submitted his explanation. Without considering the merits of the explanation, an enquiry was ordered. Enquiry was conducted, basing on the enquiry report Respondent dismissed the Petitioner from services which is illegal, arbitrary and unjust and liable to be set aside. Though the Petitioner filed mercy application to the Respondent several times but in vain. Removal of Petitioner from service is shockingly disproportionate to the charges alleged against the Petitioner and he prays to direct Respondents to reinstate the Petitioner with full back wages, continuity of service and all other benefits.

3. Respondent management has filed counter challenging the maintainability of the petition under Sec. 2A(2), further stating that Petitioner was an unauthorized absentee who was dismissed from services on proved charges of absenteeism after conducting a detailed domestic enquiry following the principles of natural justice. It is further alleged that Petitioner remained absent during the year 2007 which hampered the working of the company, the absence of the Petitioner was without any sufficient cause which is grave misconduct within the Standing Order 25.25 of the company and dismissal is not bad in the light of the case law reported in 1996(1) SCC 302 **State of U.P. and other Vs. Ashok Kumar Singh**. It has been submitted that the workman was appointed on 29.7.2002 as badli filler and subsequently transferred to Bhupalpally. He was issued with charge sheet dated 17.3.2008 for his absence from duty during the period from 1.1.2007 to 31.12.2007 without any sanctioned leave or sufficient cause. The charge sheet returned undelivered. As such, the charge sheet cum enquiry notice was published in Telugu Daily New Paper Andhra Jyothi on 20.5.2008 advising him to submit explanation and to attend the enquiry on 30.5.2008. Accordingly, Petitioner participated in the enquiry, full and fair opportunity was given to him wherein he has admitted that he remained absent from duty on the dates mentioned in charge sheet due to ill-health. Petitioner was irregular to his duties. He has put in

200 musters in 2003, 158 musters in 2004, 165 musters in 2005, 118 musters in 2006 and nil musters in the year 2007. If he was really sick he would have reported at company's hospital which he did not do so. It is submitted that the minimum musters required to be put in by an employee employed in underground is 190 which the Petitioner has failed to put in as required, therefore he was issued with charge sheet, enquiry held and punishment is proper in the light of the facts of the present case. Hence, the Petitioner is not entitled for any sympathetic or lenient view.

4. Both the parties were directed to file their respective evidence. Petitioner workman has filed xerox copies of documents, *viz.*, name removal letter, show cause notice, explanation to show cause notice and dismissal order. The Respondent management has also filed the office copy of charge sheet, original enquiry proceeding, notice of enquiry to the Petitioner, paper publication, enquiry proceeding, enquiry report, show cause notice, Petitioner's reply to show cause notice and dismissal order.

5. On question of the legality and validity of domestic enquiry conducted by the management it is pertinent to mention that as the Petitioner has not challenged the legality of the domestic enquiry held to be legal and valid by order dated 5.7.2010 and case is fixed for arguments under Sec. 11A of the Industrial Disputes Act, 1947, Petitioner or his counsel called absent and heard argument of Respondent.

6. It appears that Petitioner is not interested to proceed with the case. However, I have gone through the claim statement, counter statement, documents of the both parties and arguments of the Respondent.

7. It is admitted fact that the Petitioner remained absent during the year 2007 for which a charge sheet was issued to the Petitioner, he acknowledged the receipt of charge sheet. It is also admitted that domestic enquiry was conducted and Petitioner participated in the domestic enquiry. On the basis of the report submitted by the Enquiry Officer dismissal order has been passed against the Petitioner which is under challenge.

8. This tribunal has to consider the following points:

- (1) Whether the absence of Petitioner during the year 2007 was for any sufficient and reasonable cause or not and the report of Enquiry Officer is based on evidence or not?
- (2) Whether the punishment imposed upon the Petitioner is disproportionate to the misconduct committed by the Petitioner?

9. Point No. 1: The Petitioner has submitted that he fell sick during the year 2007 due to which he remained absent. He has not been able to provide any single piece of paper neither before Enquiry Officer nor before this Tribunal to substantiate his allegations. More over, he has not mentioned what was the cause of his ill-health but he simply

stated before Enquiry Officer that he took treatment at M.G.M. Hospital, Warangal and did not produce any supporting document like prescriptions, medical certificates etc.. He simply stated in his claim petition that his health condition was not good due to which he remained absent during the year 2007. Petitioner claims for reinstatement without producing any documentary or material evidence to substantiate his claim. The management has produced Sir A. Narayana Rao, O.S., and Sri S. Pratap Reddy, Paysheet Clerk to prove that Petitioner remained absent without any leave or without any intimation through out the year 2007. Since absence of the Petitioner was admitted by the Petitioner himself during enquiry proceeding it was the sole duty of the Petitioner to prove that his absence was due to any cogent reason or sufficient cause. Petitioner was unable to prove that his absence during the year 2007 was due to sufficient reason. Though he stated that he was absent due to ill-health but he was unable to provide any material or documentary evidence in support of his illness. Even if it is presumed that Petitioner remained absent due to the ill-health why he did not informed his superiors regarding his illness has not been explained by the Petitioner. Thus, the finding of the Enquiry Officer that Petitioner's absence during the year 2007 was based on evidence and reasoning and no fault can be find in the finding arrived at by the Enquiry Officer.

10. This tribunal is also of the opinion that the Petitioner remained absent without any intimation to his employer through out the year 2007, his absence was without any reasonable or sufficient cause and thereby the Petitioner has committed misconduct mentioned in para 25.25 of the Standing Orders of the company. Point No. 1 is decided accordingly.

11. Point No. 2: So far as the question of punishment is concerned the Petitioner has not been able to justify his absence during the year 2007, he has admitted before the Enquiry Officer that he remained absent during 2007 and though the Respondent management has stated in the counter statement that Petitioner remained absent during the year 2004 to 2006 it was not mentioned in the charge sheet. As such, the previous absence can not be taken into consideration but the absence during the entire year 2007 is surely a grave misconduct and management has not committed any mistake in ordering the punishment of dismissal against the Petitioner. Petitioner has alleged that his family is starving due to dismissal of the Petitioner against which Learned Counsel for the Respondent has argued that Petitioner himself is responsible for the starvation of the family members, the Petitioner was an unwilling worker who has not cared to perform his duties with sincerity as such, the punishment was proper and interference is not required in this case.

12. I agree with the argument of the Learned Counsel for the Respondent and I am also of the considered opinion that the punishment imposed on the Petitioner is neither

excessive nor disproportionate and Petitioner is not a deserving person for any lenient view to be taken in favour of the Petitioner. the Petitioner himself is responsible for the starvation of his family members, no interference is required in the matter of the punishment. Point No. 2 is decided accordingly.

13. From the above discussion, this tribunal is of the considered opinion that the claim petition is unfounded, no interference is required in this case. Petitioner is not entitled for any relief, petition deserves to be dismissed and it is dismissed. Hence, this award.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 20th day of January, 2012.

Ved Prakash Gaur, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 फरवरी, 2012

का०आ० 833.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आयल एण्ड नेचुरल गैस कारपोरेशन लिमिटेड पश्चिम बंगाल के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 31/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 3/2/2012 को प्राप्त हुआ था।

[फाइल सं० एल-30011/22/99-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 3rd February, 2012

S.O. 833.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No.....31/1999....**) of the Central Government **Industrial Tribunal/ Labour Court Kolkata** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Oil & Natural Gas Corporation Ltd. (**West Bengal**) and their workman, which was received by the Central Government on **3/02/2012**

[File No. L-30011/22/99-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 31 of 1999

Parties: Employers in relation to the Management of The Regional Director, O.N.G.C.

AND

Their Workmen

Present: Justice Manik Mohan Sarkar

.....Presiding Officer

APPEARANCE:

On behalf of the Management : Mr. Pradeep Kumar Das, Chief Manager (HR).

On behalf of the Workmen : Mr. Paritosh Das, Joint Secretary of the workmen union.

State: West Bengal.

Industry: Petroleum & Natural Gas.

Dated: 6th January, 2012.

AWARD

By Order No. L-30011/22/99-IR(M) dated 25.08.1999 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1) (d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of O.N.G.C. Ltd., in effecting deduction from the salary of the employee of O.N.G.C, CRBC, Calcutta from August 1998 to fund O.G.N.C. self contributory post retirement and death in service benefit scheme without any consent of the individual employees is legal and justified? If not, to what relief are the employees entitled to?"

2. In their written statement of claim, the workmen union submitted that the management of O.N.G.C forcibly started deduction from the monthly salary of its employees without taking individual consent, in the name of contribution to self Contributory Post Retirement and Death in Service benefit Scheme (P.R.B.S. Scheme) since August, 1988 as per in-house Office Order No. 11(23)/97-EP dated 6th August, 1998 but such deduction was started without issuing any circular to the employees on that subject. Accordingly, the employees raised their objection and protested against such illegal deduction on getting information about the same after getting pay slip of August, 1998, but ignoring their objection and protest, the

management Company continued such deduction. The workmen union has given a brief fact about the scheme by stating that P.R.B.S. Scheme made applicable and compulsory to all existing employees in regular service of the Company with effect from 16.11.1995 as being the effective date and besides monthly rate of contribution from the monthly salary in reference to paragraph 2.1 of the said Office Order, all employees were subjected to payment of additional contribution from time to time to make the requirement relating to the funding of the scheme and the said scheme was based on voluntary contribution by the member employees and it was detected in paragraph 6 that no contribution would be made by O.N.G.C. towards the scheme except a token contribution of Rs. 100/- per annum and that no other financial liability on account of the scheme would devolve on O.N.G.C. or Government of India. The employees of O.N.G.C. immediately raised their voice against such illegal deduction and submitted application to the authorities of the O.N.G.C., to the Secretary of the Ministry of Petroleum & Natural Gas and Ministry of Labour, both Government of India. But the management Company did not give any reply to the same and continued deduction. Consequently, in view of the drawbacks of the non-statutory P.R.B.S. Scheme, the workmen union was compelled to raise the issue before the Regional Labour Commissioner (Central) at Kolkata where the management of O.N.G.C. was summoned through notice and the management Company filed their written reply and thereafter the conciliation proceeding was undertaken but ended in failure and a report was sent to the Ministry of Labour, Government of India, New Delhi which subsequently got the matter vetted by the Ministry of Petroleum & Natural Gas and referred the issue before this Tribunal. The workmen union apprehends that P.R.B.S. Scheme being non-statutory, the amount which has been and is being deducted from the salary of the employees might be swindled, defalcated or lost at any point of time and in the event of such miss-happening, management of O.N.G.C., Ministry of Labour and Ministry of Petroleum and Natural Gas or any other authority of the Government of India would not take any administrative responsibility and financial liability and so the workmen union has prayed for an order to hand over all amount of pension cost of uniform which has been transferred/deposited to the said P.R.B.S. Scheme.

3. In their written statement of reply, the management of O.N.G.C. initially challenged the maintainability of the present reference on various grounds and has stated that the monthly contribution to P.R.B.S. Scheme commencing from August, 1998 is being done in terms of Office Order dated 06.08.1998 and there is no basis to content to take individual consent of the employees. It is claimed that the workmen union was well aware about the memorandum of understanding arrived at in between the management of O.N.G.C. and the employees represented through the

recognized union on 19.07.1998 at all India level on O.N.G.C. Self-contributory Post Retirement and Death in Service Benefit Scheme (P.R.B.S.) for the unionized categories of employees. The management Company has denied the claim of the employees that they are entitled to get back all the amount deducted from their salary alongwith interest. It is stated that P.R.B.S., is applicable and compulsory to all the unionized categories of the employees in regular service of the Company and the unions were in favour of the said scheme and consequently a memorandum of understanding was signed by and in between the management and the unions on 19.07.1998 and the management Company denied any contrary to the said P.R.B.S. Scheme. The Company also denied the allegation that such P.R.B.S. was not circulated and that the deduction in view of the said scheme was illegal and the allegation of forcefully diverting the monetized value as having no basis. The management Company has thus prayed for refusal of the claim of the workmen union as being unjustified and barred in view of the order of the Hon'ble Supreme Court and also challenged the maintainability of the reference.

4. The workmen union has filed a rejoinder denying the contents of the written statement of reply of the management Company and claimed that the matter pending before the Hon'ble Supreme Court of India is something different from the related matter in this reference and reproduced the story made in the written statement of claim.

5. So, in the present reference it is found that the employee members of the present workmen union have concentrated their objection to the manner of deduction though they have not raised any voice against the existence of such P.R.B.S. Scheme. It is repeatedly claimed that such a scheme affecting the salary of the employees of the O.N.G.C. by way of making some deduction though under a scheme, cannot be compulsory one and the Company must seek consent or option from the employees to be included in the said scheme and the workmen union also claimed that such scheme should be optional as the scheme is a non-statutory one. It is further claimed by the workmen union that the scheme is a self-contradictory one as in one place, the membership was made compulsory and in another portion it has been stated that the scheme was based on voluntary contribution of the member employees. It is also claimed by the said workmen union that the P.R.B.S. having no statutory force or legislative support, it cannot be forcefully introduced on the employees of the Company and it should be optional since the scheme is based upon some deduction from the salary of the employees besides normal monthly contribution statutorily being done and thus the management Company has forcefully deprived the employees to their right and property and benefits. The authorized representative of the workmen union has submitted that the employees of the Company are apprehensive and afraid of crores of rupees collected from

such deduction may be swindled, defalcated or lost and in that case the O.N.G.C. has declared non-responsibility or no liability for such happenings.

6. The initial dispute raised from the side of the workmen union was against the deduction made by the management of O.N.G.C. from the salary of the employees of O.N.G.C., C.R.B.C., Kolkata on and from August, 1998 for funding the O.N.G.C. Self Contributory Post Retirement and Death in Service benefit Scheme and it is specifically submitted by the workmen union that such deduction can only be made after taking consent of the employees. In short, the workmen union claimed that obtaining of consent is a pre-condition to the deduction under the said P.R.B.S. and that is not being done by the management of O.N.G.C. It is further submitted that several employees of O.N.G.C. has made individual appeal through applications to the authority of the O.N.G.C. expressing desire not to be a member of the scheme and requested the management not to deduct any amount towards the alleged contribution to the P.R.B.S. So, it is found that the workmen concerned practically claimed that the deduction from their respective salaries will be subject to their own volition or exercising of consent and it cannot be done *suomoto* by the management of O.N.G.C. In reference to the same the authorized representative of the workmen union submitted that P.R.B.S. introduced by the O.N.G.C. makes the membership compulsory in respect of the workers working on and from 16.11.1995, but at the same time has made the provision in the said scheme that the scheme would be passed on voluntary contribution by the member employees. It is further claimed that the P.R.B.S. as introduced by the O.N.G.C. has no legislative support nor the Petroleum and Natural Gas, Government of India, New Delhi issued any instruction or approval for implementation of the said scheme and thereby it is claimed that the fundamental right assured under Article 14 of the Constitution of India cannot be violated by the act of the O.N.G.C. by a forcible deduction from the salary of the employees for funding the said scheme and thereby the management of O.N.G.C. has forcefully depriving the right to property and benefits of its employees.

7. The workman union has further expressed concern apprehending fraudulent handling of the fund so collected through deduction from salary of the employees towards P.R.B.S. and has claimed protection from apprehending fraud and malpractice in respect of handling the fund so collected.

8. On the other hand, the authorized representative of the management submitted that the scheme was introduced in the nature of welfare activity of the employees of the management Company and it was not meant for own benefit of the Company and it was a product of memorandum of understanding dated 19.07.1998 reached

in between the management and the representative of the recognized unions. It is also claimed that such deduction is being made on the basis of consent of the unions made thereto and the said benefit of the scheme was widely discussed in such bipartite talk before reaching to the conclusion for such benefit. It is further claimed by Mr. Pradeep Kumar Das that the representation in the memorandum of understanding was made by the majority recognized unions which represented about 98% employees of the O.N.G.C. and such recognized unions insisted for continuation of the scheme on their volition. It is further claimed that such representative of the major recognized union consented for making the scheme applicable and compulsory to all the existing employees in regular service of the Company and on the effective date of the claim *viz.* 16.11.1995, the date from which the Employees Pension Scheme was notified by the Government of India. It is further submitted that P.R.B.S. was formulated with the basic objective to ensure welfare at the post retirement stage and also in case of death in service of the employees and also to meet socio-economic needs and welfare covering risk factor in the event of death/permanent disabilities in service. By discouraging concern and apprehension of the workmen union he has submitted that the working force or infrastructure of the P.R.B.S. in the O.N.G.C. has been caused by positive and proactive role by the O.N.G.C. by providing sufficient man-power and other facilities to enable the trust entrusted with the administration and mobilization of the P.R.B.S. to discharge its responsibilities.

9. From the manner of submission on behalf of the sponsoring workmen union in the present reference, it is found that in respect of promulgation and implementation of the P.R.B.S. the workmen union has no objection or protest, but it is claiming that contribution to the pension scheme as provided under P.R.B.S. should not be compulsive in natures it being acted upon by the management of O.N.G.C. and it should be subjected to the display of consent of each and every employee of the O.N.G.C. since there are some compulsory deduction or contribution from the salary already existing since before the introduction of the P.R.B.S.

10. The sponsoring workmen union has never stated that introduction of P.R.B.S. in O.N.G.C. in respect of post retirement benefit and death in service scheme was not a product of a bipartite settlement by way of memorandum of understanding. It is also not denied by the workmen union about the claim of the management of O.N.G.C. that in the said bipartite settlement the majority of the union or duly recognized union participated and the matter was widely discussed there before the consent was displayed by the said workmen union for implementation of the said scheme. The provision of the scheme provided that the membership would be compulsory in respect of the employees and on and from 16.11.1995 the date of

promulgation of the scheme in O.N.G.C. also provided for contribution to the said scheme though the word voluntary was added to the contribution concerned. Since the promulgation of the scheme in O.N.G.C. is a product of bipartite settlement, this Tribunal should not interfere there and if the workmen union in this reference feels aggrieved about the said scheme it may raise the matter in that bipartite level for discontinuation of the scheme or some modification or alteration of the terms of the said scheme. In other words, the remedy of the workmen union is available only at the stage of that bipartite talk over the same and since the bipartite settlement or the memorandum of understanding is not found to be with some evil desire, this Tribunal does not want to interfere since the management has already stated that it was introduced for the welfare of the employees of O.N.G.C. at the post retirement stage.

11. So, I do not find any reason to interfere and the deduction made by the management of O.N.G.C. from the salary of the employees of O.N.G.C. from August, 1998 to fund Self Contributory Post Retirement and Death in Service Benefit Scheme without consent of the individual employees is found to be legal and justified since the legal force has been achieved as the said scheme is a product of bipartite settlement. Consequently, the employees concerned are not entitled to any relief in the present reference.

JUSTICE MANIK MOHAN SARKAR, Presiding
Officer
Dated Kolkata,

The 6th January, 2012.

नई दिल्ली, 3 फरवरी, 2012

का०आ० 834.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई स्टील प्लांट भिलाई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 157/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-02-2012 को प्राप्त हुआ था।

[फांसं एल-29012/13/2003-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 3rd February, 2012

S.O. 834.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 157/2003.....) of the Central Government Industrial Tribunal/Labour Court Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Bhilai Steel Plant

(Bhilai) and their workman, which was received by the Central Government on 03.02.2012.

[F.No. L-29012/13/2003-IR(M)]
JOHAN TOPNO, Under Secretary

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/157/2003 Date: 13.01.2012.

Party No. 1 : The Managing Director, Bhilai Steel
Plant Bhilai, Distt. Durg, Chhattisgarh

Versus

Party No. 2 : Shri Babu Ram S/o. Shri Bukhia, Ex.
Senior Technician, Arumurukasa
Village, Distt. Durg, Chhattisgarh.

AWARD

(Date: 13th January, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bhilai Steel plant and their workman Shri Baburam Bukhia, for adjudication, as per letter No. L-29012/13/2003-IR (M) dated 04.06.2003, with the following schedule:—

"Whether the action of the management of the Bhilai Steel Plant in superannuating Sh. Baburam w.e.f. 30.01.2002 by ignoring the decision/outcome of the Medical test is legal & justified? If not, to what relief the workman is entitled for?".

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Baburam, ("the workman" in short) filed his statement of claim and the management of the Bhilai Steel Plant, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was working as an attendant at Rajhara Mines, owned by the Party no.1 and he is an uneducated Schedule Caste person and as such, at the time of his employment, the office staff of party no.1 entered some date of birth as assessed by his appearance and in the year 1982, the party no.1 called for an age proof certificate and accordingly, he got his age proof certificate from the village records and submitted the same on 22.01.1983, according to which, his date of birth was 12.10.1948 and the said date of birth was never disputed by party no.1 in any manner and they entered the said date of birth as his approved date of birth and the documentary evidence and the own records

of party no.1, established the fact that his date of birth presumed as 08.11.1937, solely for the sake of his impugned premature superannuation was never in operation and quite contradictory to the own medical officer's report dated 05.07.1984 and 25.11.1993 and letter dated 13.02.1999 of party no.1 and according to the medical report dated 05.07.1984 of the own medical officer of party no.1 his age was 36 years, which corroborates the date of birth as mentioned in the village certificate and in the medical officer's report dated 25.11.1993, it was mentioned that, "He appears to be 46 years of age," which indicates that the age was determined on the basis of his appearance and such determination of age is always prone to differ by an year or two, but the same cannot relate to the year 1937, as assumed by party no.1 for his superannuation, rather the same is nearer to his actual date of birth i.e. 12.10.1948 and the letter dated 13.02.1999 which was addressed by party no.1 to the Industrial Medical Officer, and by which, several employees including himself were directed for medical examination, his date of birth was mentioned as 12.10.1948, which clearly proves that the assumed date of birth by party no.1 is totally untenable and illegal.

The workman has prayed to declare the order of his superannuation as null and void and for his reinstatement in service w.e.f. 31.01.2000 and payment of all wages, allowance and monetary and non-monetary benefits.

3. The party no.1 in its written statement has pleaded *inter-alia* that the workman raised the present dispute challenging his superannuation on attaining the age of superannuation and the terms of reference is vague and the terms of the reference is silent about the claim of the workman regarding his date of birth and the particulars of the so called decision/outcome of the medical test and is therefore incapable of being adjudicated. It is further pleaded by the party no.1 that the workman was initially appointed on Nominal Muster Roll (Casual Basis) and he was regularized w.e.f. 14.11.1961 and thereafter by order dated 05.02.1964, he was appointed as a Khalasi and he was promoted as a helper w.e.f. 17.10.1966 and his services had been terminated w.e.f. 17.10.1966, but considering the mercy appeal submitted by the workman, he was re-appointed as helper vide order dated 26.08.1968 and he reported for duty w.e.f. 31.08.1968 and the workman submitted his attestation form, where in, his age was mentioned as 25 years as on 08.11.1962 and accordingly, his date of birth was calculated, which was found to be 08.11.1937 and as per the CPF declaration and nomination form filled in on 13.01.1978, the workman had declared his date of birth as 27.07.1937, which had been counter signed by personnel officer and the said date of birth is in conformity with the age given in the attestation form and the workman would have been retired on attaining the age of 58 years on superannuation w.e.f. July, 1995, but due to oversight, he could not be retired on the aforesaid date and continued in

service and with regard to determination of date of birth detailed instructions have been given *vide* circular no. M & R-52/82 dated 17.05.1982 and as per clause 4.10 of the said circular, the date of birth of the employees, whose date of birth has already been recorded in the descriptive roll/declaration form/service book and signed/thump impressed by him, the date so received shall be deemed as final and binding and the workman was served a letter on 28.11.1968 for recording his date of birth and qualification in the official records, but he did not respond and on 29.11.1982, he was issued another letter to submit documentary proof in this regard, but the workman did not submit any authentic record with regard to his date of birth and the date of birth i.e. 08.11.1937 was calculated on the basis of the own declaration of the workman in the attestation form and the same is binding on him as per law and the rules of the company and in view of the same, the workman is not entitled to any relief.

4. The parties in support of their respective stand have adduced oral evidence besides placing reliance on documents. The workman has examined himself as a witness and in his examination-in-chief which is on affidavit, he has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that he doesn't know about the filing of the affidavit and the affidavit was drafted by his counsel and he was engaged in the year 1962 but he cannot say his age at the time of his engagement and he doesn't know if any document was given by him at the time of his appointment and he had not filed any document during his service tenure and he cannot say when he completed 58 years of age and he doesn't know, if he completed the age of 58 years in the year 1995.

5. One Mahadeo, a Junior Manager of Bilai Steel Plant was examined as a witness on behalf of the party no. 1. His examination-in-chief on affidavit is exactly in the line of the stand taken by the party no. 1 in the written statement. In his cross-examination, the management witness has stated that the medical certificate, Ext. W-6 was issued after test and in that certificate the date of birth of the workman has been mentioned as 05.08.1948 and the certificate issued by the Gram Panchayat, Ext. W-8 shows that the date of birth of the workman is 21.10.1948. He has further admitted that the management assumed the date of the birth of the workman at the time of appointment from his physical appearance, since he had not produced any document in support of his date of birth.

6. At the time of argument, it was submitted by the learned advocate for the workman that at the time of appointment of the workman, the age of the workman was assessed on the basis of his appearance by the management and the management witness in his cross-examination has admitted the same and being asked by the management to produce document in proof of his date of birth, the workman

produced a certificate obtained from the Grampanchayat, in which his date of birth was mentioned as 12.10.1948 on 22.01.1983 and the said certificate was never disputed by the management and management also entered the same as the approved date of birth of the workman and from the evidence on record it is clear that the date of birth of the workman is 12.10.1948 and the certificate issued by the Grampanchayat is admissible and prevails over entry in school register and the date of birth of the workman as assumed by the management for premature superannuation of the workman is totally untenable and illegal and as such, the reference is to be answered in affirmative.

In support of such contentions, reliance was placed on the decisions reported in 2010 (1) Mh. LJ 41 (CIDCO Vs. Vasudha Goraknath Mandevvelkar) and Judgement of the Hon'ble Jabalpur High Court in letters Patent Appeal no. 409 of 2000 (Steel Authority of India Vs. Govind Singh).

7. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman in his evidence was unable to tell his age and date of birth and he also failed to produce the original of Ext. W-8 and the workman was initially appointed on casual basis and he was regularized *w.e.f.* 14.11.1961 and the workman submitted the attestation form, Ext. M-6 at the time of his employment having his signature and in that attestation form, the age of the workman was recorded as 25 years as on 08.11.1962 and accordingly, his date of birth was calculated as 08.11.1937 and in the declaration/nomination form for CPF, Ext. M-5, the workman had mentioned his date of birth as 27.07.1937 and the superannuation age of the employees of the party no. 1 is 58 years and the workman attended 58 years of age on 30.11.1995, but due to oversight, he could not be retired and continued in service till 31.01.2002 and he availed the benefit of extra services from 30.11.1995 to 31.01.2002 and as per clause 4.10 of the circular dated 17.05.1982, employees who's date of birth has been recorded in the descriptive roll/declaration form Service/book and signed/thump impressed by him, the date so recorded shall be deemed as final and binding and as such, the workman is not entitled for any relief. It was also submitted that there was delay in seeking the relief for alteration of date of birth and on that ground also, the reference is to be answered in negative.

In support of such contentions, reliance was placed on the decisions reported in (1993) 2 SCC 162 (Union of India Vs. Harnam Singh) and (2005) 6 SCC 49 (State of UP and another Vs. Shivnarayan Upadhyaya).

8. Keeping in view the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the parties, now the present case in hand is to be considered.

9. First of all, I think it apropos to mention the schedule

of reference made by the Central Government. The Central Government has made the reference for adjudication as to whether the action of the management in superannuating the workman *w.e.f.* 30.01.2002 by ignoring the decision/outcome of the medical test is legal and justified. It is to be mentioned here that nothing has been mentioned as to when the said medical test was done or conducted. It is also well settled that the Tribunal cannot go beyond the schedule of reference. In view of the said settled principles of law, there is no question of consideration of the certificate granted by the Grampanchayat regarding the date of birth of the workman, while deciding the reference. Therefore, with respect, I am of the view that the decision reported in 2010 (1 Mh. LJ.-41 (Supra)) has no application to the present case in hand.

10. The workman has not pleaded a single word in the statement of claim regarding any medical test conducted for determination of his age. The documents Ext. W-6 and Ext. W-7 shows that the age of the workman was recorded as 36 years and 46 years on 05.07.1984 and 25.11.1993 respectively. However, it is found that the said medical certificates are not certificates regarding the determination of date of birth by any medical examination. Ext. W-7 shows that the same is a report dated 25.11.1993 regarding the medical examination under Rule 29 B of the Mines Act and in that document, it has been mentioned that the workman appears to be 46 years of age. The medical certificate dated 05.07.1984 has not been produced.

11. According to the claim of the workman, his date of birth is 12.10.1948. In his evidence, he has not been able to say what was his age at the time of his joining the service and when he attained the age of 58 years. It is not disputed that the workman was regularized in service on 14.11.1961. Document Ex. M-4, shows that the workman was regularized on 14.11.1961 and prior to that he was engaged on nominal muster rolls and he also reported on for duty on 16.11.1961. It is also found from the document Ext. W-6 that the workman was working from 03.03.1959 to 14.03.1961 as Mazdoor Grade-I of Rajura Mines. If the claim of the workman that his age was just above 10 years on 03.03.1959 and was just above 13 years on 16.11.1961. It is never the case of the workman that he joined in the service at the age of 10 years. So the claim of the workman that his date of birth is 12.10.1948 seems to be quite improbable.

12. It is necessary to mention here that though the workman has claimed that his date of birth is 12.10.1948, it is found from Ext. W-8, the certificate obtained from Grampanchayat that the date of birth of the workman has been mentioned as 21.10.1948 in the same, which is quite inconsistent with the plea of the workman.

13. Circular No. Per/RR/5020 dated 24th March, 1982

is a circular issued by the Steel Authority of India Limited in respect of rules regarding determination of date of birth. According to clause 4.1 of the said circular, every employee is required to declare his date of birth in the application or the prescribed form before his first appointment and also to produce confirmatory evidence in support of his declaration. Clause 4.4 says that in case of those who had not passed matriculation/school final examination/equivalent examination at the time of entering the service, documents *i.e.* school certificate from educational institutional where the candidate/employee studied, service record/service certificate issued by previous employers in case of candidates/employees who had in employment under public sector enterprises/Govt. departments or a Local body prior to joining SAIL, attested extracts from register of birth and death maintained by Gram Panchayats, Municipality, Municipal Corporation, Town/Notified Area or an appropriate authority, Baptism Certificate from Church in case of Christian employees/horoscope in case of Hindu employees and certificate of birth from Government hospitals were the candidate/employee was born containing date of birth may be excepted as evidence of age.

Clause 4.6 says that where the employer has not passed Matriculation/School Final Examination/equivalent examination or has not studied in a school and none of the documents indicated in 4.4 can be produced by him, an affidavit attested by a Magistrate to that effect shall be given by him alongwith the declaration of his age which after due corroboration by a Medical Board Nominated by the Management, may be accepted as the proof of age. In case of differences between the age declared in the Affidavit and the age certified by the Medical Board, the higher age shall be accepted and recorded.

Clause 4.7 says that wherever the Medical Board Certifies a particular age in respect of an employee *vide* para 4.6 the date of birth shall be taken as the corresponding date after deducting the number of years representing his age from the date of his medical examination. For example, if the date of medical examination of an employee is 16th July, 1981, and the Medical Officer of the Company certifies the age of the employee as 25 years on the date of medical examination, the date of birth to be recorded in the personal record of the employee, shall be 16.07.1956.

Clause 4.8 says that in case where the Matriculation or School Final or equivalent examination certificate or any acceptable document as produced by the employee/candidate, indicates only age in terms of the year and month, the date of birth for the purpose of serving records may be taken as the last date of such month. If age is mentioned after deducting the given age from the concerned year and the last date of the year so arrived at, shall be taken as the date of birth.

Clause 4.9 says that once the date of birth is accepted and recorded in accordance with provisions of para 4.4 at the time of joining or thereafter or as determined as per provisions of para 4.6 it shall become final and binding.

According to Clause 4.10 which is in respect of those employees whose date of birth has already been recorded in the descriptive roll/declaration form/service book of the employee and signed/thumb impressed by him, the date so recorded shall be deemed as final and binding.

The workman has not produced any of the documents as mentioned in clause 4.4 and 4.6 of the circular. There was also never any determination of the age of the workman by any medical board as mentioned in clause 4.6 of the circular. On the other hand, it is found from the document, Ext. M-6, the attestation form that the workman has mentioned his age as 25 years on 08.11.1962. The said document has been signed by the workman. So the management was right to hold the date of birth of the workman to be 08.11.1937. As per clauses 4.9 and 4.10 of the circular dated 24.03.1982, the date of birth of the workman so recorded became final and binding. Hence, it is ordered:—

ORDER

The reference is answered against the workman. The workman is not entitled for any relief.

J.P. Chand, Presiding Officer

नई दिल्ली, 3 फरवरी, 2012

का०आ० 835.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स शिव दत्त शर्मा खदान मालिक क्योन्हर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 29/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-02-2012 को प्राप्त हुआ था।

खफा० सं० एल-29011/30/2003-आई आर (एम),
जोहन तोपनो, अवर सचिव

New Delhi, the 3rd February, 2012

S.O. 835.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 29/2003.....) of the Central Government Industrial Tribunal/ Labour Court Bhubaneswar-2 now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Shiv Dutt Sharma, Mines owner,

(Keonjhar) and their workman, which was received by the Central Government on 01.02.2012.

[F.No.L-29011/30/2003-IR(M)]
JOHAN TOPNO, Under Secretary

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT BHUBANESWAR

PRESENT: Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 29/2003

Date of Passing Award-13th January, 2012

Between:

M/s. Shiv Dutt Sharma, Mines Owner,
At./Po. Barbil, Dist. Keonjhar,
1st Party—Management.

AND

Their workman, Sri Damudhar Sethi,
represented through the General Secretary,
North Orissa Workers Union,
Po. Barbil, Dist. Keonjhar.
2nd Party—Union.

Appearances:

None	: For the 1st Party— Management.
Sri B.S. Pati, General Secretary, North Orissa Workers Union.	: For the 2nd Party— Union.

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Shiv Dutt Sharma, Mines Owner, At./Po. Barbil and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-2901/30/2003-IR(M), dated 18.8.2003.

2. The dispute, as referred to, is to the following effect:—

"Whether the action of the management of M/s. Shiv Dutt Sharma, Mines Owner, At./Po Barbil, Dist. Keonjhar by terminating the services of Sri Damudhar Sethi, Ex-Munshi w.e.f. 1.4.2001 without giving any written order, serving any notice, domestic inquiry and not observing the provisions of I.D. Act is justified? If not, what relief the workman is entitled to?

3. The disputant workman has filed his statement of claim in which it has been stated that he joined the services of the 1st Party-Management during February, 1985 as a Munshi. He was getting the monthly salary of Rs. 1200/- besides being entitled to provident fund, bonus, leave and other benefits as admissible to similar employees. He discharged his responsibilities with utmost sincerity and honesty. He was never served with any charge-sheet nor any domestic enquiry was conducted against him, but the 1st Party-Management on 1.4.2001 refused him employment without assigning any cause. The Union on being informed raised an industrial dispute, but due to adamant attitude of the 1st Party-Management conciliation failed and consequently the present reference was made. He was not given any notice or written order prior to termination of his services. The 1st Party-Management is guilty of violation of the statutory provisions of Section 25-F and 25-G of the Industrial Disputes Act. He was not even given any retrenchment compensation in lieu of notice. Therefore, the 1st Party-Management be directed to reinstate the disputant workman in his service with effect from 1.4.2001 with full back wages and other consequential benefits.

4. The 1st party-Management has denied the allegations made by the disputant workman and stated that the 2nd Party-workman was working as a Munshi in the mines of the 1st Party-Management at Nuagaon Mines from November, 1988 to March, 1991. Again he worked during April, 1996 to March, 2001. Thereafter he remained absent from work on his own from March, 2001 and engaged himself in collection of Hanuman money. He never joined the services during the month of February, 1985. He received all his wages and dues till he worked. The 1st party-Management has never refused him employment. He himself has not turned up after 31st March, 2001 and never requested for employment. Since he was not terminated from service by the 1st Party-Management, there was no need to give him any notice or written order regarding termination of service. There is no question of violation of any law or basic principles of natural justice. Therefore he is not entitled to get any relief as claimed by him.

5. This case was earlier decided ex parte, but on the writ application of the 1st Party-Management the ex parte award was set aside by the Hon'ble High Court of Orissa vide order dated 8.8.2008. After the case having been remanded for fresh hearing the 1st Party-Management appeared and filed written statement the contents of which have been summarily quoted above. The 1st Party-Management thereafter appeared for few dates on notice being sent to the parties, but except those few dates the 1st Party-Management remained absent from 27.11.2008 to 16.12.2009. Thereafter both the parties appeared for four consecutive dates. On 20.4.2010 one Advocate on its behalf appeared and filed a petition for time, but its petition was not entertained as the 1st Party-Management was not permitted to represent through Advocate and the case was fixed for

evidence. On the next date i.e. on 22.6.2010 both the parties appeared, but due to Presiding Officer being on leave the case was adjourned. Thereafter the 1st Party-Management remained absent from 12.7.2010 to 12.10.2011 till the hearing of the case was concluded after arguments though notices through ordinary as well as registered post were sent to it.

6. Since the 1st Party-Management has not taken part in the proceedings of the case and the case was earlier set ex parte against it, the case was proceeded as such.

7. The disputant workman filed his sworn affidavit in support of his claim.

8. The 1st Party-Management has not adduced any evidence.

9. The allegation of the disputant workman is that he joined the service under the 1st Party-Management during the month of February, 1985 as Munshi and was in receipt of monthly salary of Rs. 1200/- besides getting P.F., bonus, leave and other benefits admissible to similar employees. He continued in service till 31st March, 2001, but was refused employment by the 1st Party-Management with effect from 1.4.2001 without any reason or rhyme. During tenure of his employment he was never served with any charge-sheet nor any domestic enquiry was conducted against him. He was not even given any notice or compensation. As such refusal of employment is illegal and arbitrary and comes under the term of "retrenchment" as defined under sub-section (oo) of Section-2 of the Industrial Disputes Act, 1947. The 1st Party-Management is thus guilty of violation of the statutory provisions of Section 25-F and 25-G of the Industrial Disputes Act. The disputant workman in his affidavit has alleged and proved the facts of the case as stated in his statement of claim against which there is no evidence from the side of the 1st Party-Management. The 1st party-Management has itself admitted that the disputant workman started working under him from November, 1988 and continued till March, 1991. He again started working from April, 1996 and continued till March, 2001. Therefore as per its admission it is established that the disputant workman was terminated from service without giving any prior notice and retrenchment compensation as required under section 25-F of the Industrial Disputes Act, 1947 as his case comes under the definition of "retrenchment". Thus for violating the provisions of Section 25-F of the Industrial Disputes Act, termination of his service becomes illegal and therefore the disputant workman is entitled to be reinstated in service with effect from 1.4.2001 with full back wages and other consequential benefits after adjusting the amount already paid to the disputant workman under the orders of the Hon'ble High Court.

10. The 1st Party-Management is accordingly directed to reinstate the workman and pay him back wages along

with consequential benefits as above within a period of three months from the date of publication of award.

11. The reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer.

नई दिल्ली, 3 फरवरी, 2012

का०आ० 836.——औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पुष्ट्रा ठेकेदार आई औं सी इंडियन बौटलिंग प्लाट मालाप्रम के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनामुलम के पंचाट (संदर्भ संख्या 4/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 3/2/2012 को प्राप्त हुआ था।

खफाइल सं० एल-30011/41/2006-आई आर (एम),
जोहन तोपना, अवर सचिव

New Delhi, the 3rd February, 2012

S.O.836.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.....4/2007....) of the Central Government Industrial Tribunal/Labour Court Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Pushparaj, Cont. IOC Indane Bottling Plant & IOC Bottling Plant (Malappuram) and their workman, which was received by the Central Government on 3/02/2012

[File No. L-30011/41/2006-IR (M)]
JOHAN TOPNO, Under Secretary

ANNEXURE

INTHE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc. LL.B., Presiding Officer (Thursday the 29th day of December, 2011/8th Pausha, 1933)

I.D.4/2007

- | | |
|-------|--|
| Union | <ol style="list-style-type: none"> : 1. The Secretary,
IOC Bottling Plant Workers Union (CITU),
IOC, Chelari,
Malappuram (Kerala). 2. The Secretary, BMS, M/s. IOCL,
Chelari Plant,
Malappuram. 3. The Secretary, STU,
IOCL, Chelari Plant,
Malappuram. 4. The Secretary,
Independent Plant Workers Association
(IPWA), IOC, Chelari,
Malappuram (Kerala). |
|-------|--|

5. The Secretary,
INTUC Union, IOC, Chelari,
Malappuram (Kerala)
By Adv. Shri H.B. Shenoy.

Managements : 1. Shri Chelangat Pushparaj,
Contractor,
Indane Bottling Plant,
IOC, Chelari,
Malappuram (Kerala).
By Adv. Shri C. Anilkumar

2. The Plant Manager,
IOC Bottling Plant,
Chelari, Malari, Malappuram.
(Impleaded as per Order on IA 21/2008).
By M/s. Menon & Pai.

This case coming up for final hearing on 22.12.2011
and this Tribunal-cum-Labour Court on 29.12.2011 passed
the following.

AWARD

The Government of India, Ministry of Labour & Employment, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred the industrial dispute for adjudication to this Tribunal *vide* order No. L-30011/41/2006-IR(M) dated 27.09.2006.

2. The dispute is:

"Whether the management of M/s. Chellangatt Pushparaj, Contractor, IOC Bottling Plant, Chelari is justified in not revising the wages of the workers engaged in Haulage, Cylinder and House Keeping Workers for the year 2005-06. If not, to what relief the workers are entitled?"

3. The industrial dispute was raised by five unions for the revision of wages and other benefits of the workmen engaged by the management for the works of handling gas cylinders, haulage, house keeping and the miscellaneous works in the Indian Oil Corporation Bottling Plant at Chelari.

4. After appearance the five unions have jointly filed claim statement with the prayer to revise the pay by 50%, DA by 90%, House Rent Allowance by 15%, Incentive to 0.15 Rupee per cylinder for filling cylinders exceeding 3,00,000 lakhs, Washing Allowance to Rs. 100/- and Canteen Money to Rs. 10/- per day *w.e.f.* 01.04.2005. The allegations made in a nutshell are that the management is the contractor/immediate employer engaged for providing labour to the principle employer, the Indian Oil Corporation Bottling Plant at Chelari. The terms and conditions of service of the workmen are governed by tripartite settlements entered into by the management and the management of Indian Oil Corporation Bottling Plant, Chelari as the employer with the

unions herein representing the workmen. Last of such settlement was entered on 08.07.2003 in the presence of the Assistance Labour Commissioner (Central) Kochi. It was for the period from 16.06.2002 to 15.06.2004. After the expiry of the period the unions had submitted Charter of Demands for revision of wages and other benefits for the year 2004-2005. Negotiations over it were turned out to be unsuccessful and the conciliation proceedings failed due to the non co-operation and recalcitrant attitude of the management. While so as the year 2004-2005 went by unions had submitted their charter of demands for revision of wages and other benefits for the year 2005-2006. As no settlement could be arrived at through negotiations, conciliation proceedings was initiated by the Assistant Labour Commissioner (Central), Kochi. During the course of the conciliation proceedings there was a proposal from the side of the management to hike the wages by giving 18.71% to 24% increase ranging from Rs. 825/- to 950/. Initially unions declined to accede to it. But later it was accepted on 24.02.2006. But the management went off from the proposal and thereby the conciliation proceedings failed. There was no revision of wages for over a period of four years despite the submission of fresh charter of demands by the unions. After the lapse of the tenure of t h e last settlement management is duty bound to revise the wages in view of the considerable increase in the cost of living after 15.6.2004 and the revision of wages for similarly placed workers in other similar industries during that time.

5. The contentions put forward by the management in the written statement are that the reference is not maintainable since the unions which raised the industrial dispute are not representing the majority of the workmen and hence not competent to raise such a dispute. Management is the contractor engaged by the Indian Oil Corporation for the supply of labour for loading, unloading, handling and housekeeping work of its LPG Bottling Plant at Chelari. But he did not have the choice of engaging his own workers. Initially the contract was for a period of one year commencing from April 2002 and it was extended for a further period of one year each on two occasions with the same rate of wages and other conditions. After that a fresh contract was entered into for a further period of one year. The management after entering into the contract had negotiations with the unions and thereby a settlement was entered into on 08.07.2003 by which considerable increase was given to the workmen in the house keeping section for a period of two years ending on 15.06.2004. As no increase in the rates was granted by the Indian Oil Corporation the management was not in a position to pay more to the workers. Fresh settlement could not be arrived at because of the uncompromising stand of the unions and not due to the non co-operation of the management in the conciliation proceedings. The workmen were getting much higher salary and other benefits than the similarly placed workmen in other industries in the region. At any

point of time management was not in a position to grant 18.71% to 24% wage increase and such increase was not agreed to by the management. As it was labour oriented contract the contractor is unable to pay more by revising wages unless there would be considerable increase in the rates by the principal. There is no basis for the demand of the unions for the revision of wages and the management is not in a position to increase the wages and other benefits from the prevailing position in 2003-2004.

6. Indian Oil Corporation Limited represented by its Plant Manager, Indian Oil Corporation Bottling Plant, Chelari, Malappuram, Kerala was sought to be impleaded by the unions by filing I.A. 21/2008 stating that being the principal employer it is a proper and necessary party for the proper adjudication of the dispute in view of the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970 and a party to the tripartite settlements governing the terms and conditions of service of the workmen. The I.A. was allowed without any objection *vide* order dated 21.11.2008. After the impleadment as additional 2nd management the Chief Plant Manager filed written statement contending that the additional 2nd management is not a necessary party since the reference relates to an industrial dispute between the unions and the first management and no relief is claimed by the unions as against the additional 2nd management. There exists no employer-employee relationship between the additional 2nd management and the workmen and hence there cannot be a valid industrial dispute between them. Additional 2nd management awarded the contract for handling gas cylinders, haulage, housekeeping and miscellaneous works to the first management and the same was executed with the workers paid, controlled and supervised by the first management. Their wages were fixed and revised based on the settlement entered into between the unions and the first management. Additional 2nd management was not a party to the settlement. It is required only to ensure the payment of minimum wages to the workers as per the provisions applicable under the labour laws. There was no complaint at any point of time that the first management was paying less than the minimum wages. The terms and conditions of wages are not as per any tripartite agreement but only as per bipartite agreement between the first management and the unions. The dispute as to the revision of wages or as to any fresh settlement after 15.6.2004 is an issue between them only. Hence the unions are not entitled to get any relief as against the 2nd management.

7. No rejoinder was filed by the unions despite of granting sufficient opportunity.

8. For the purpose of deciding this reference one witness was examined from the side of the unions as WW1 and Exts. W1 to W4 were got marked. No evidence, either oral or documentary, was adduced from the side of the managements.

9. The points for determination are:

1. Whether the unions are competent to raise the industrial dispute and the reference is maintainable?
2. Whether the first management is liable to revise the wages of the workers engaged in haulage, cylinder and house keeping works for the year 2005-06 as prayed for in the claim statement?
3. Whether the additional 2nd management is a necessary party to this reference and if so whether it can be made liable for any relief?
4. Whether the first management is justified in not revising the wages of those workers for the year 2005-06 and if so what relief they are entitled?

10. **Point No. 1:** The reference was made at the instance of five unions of the workers of the Indian Oil Corporation Bottling Plant at Chelari. These unions were representing the workers to enter into a settlement with regard to the earlier revision of wages of those workers on 08.07.2003 and the same is evidenced by Ext. W1. Those unions were representing them in the conciliation proceedings and the same is evidenced by Exts. W2 to W4. The contention that those unions are not competent to raise the industrial dispute as they are not representing the majority of the workmen is not substantiated by adducing any evidence. At the time of argument learned counsel for the first management was fair enough to submit that the contention is not being pressed as it does not call for any consideration in view of the facts and circumstances in this case. There is no reason to hold that the reference is not maintainable as there is no evidence to substantiate the reason stated in the claim statement. Hence I hold that the reference is maintainable.

11. Point No. 2:—Union demand revision of wages and other benefits of the workmen engaged by the first management to carry out loading, unloading, handling and housekeeping work in the LPG Bottling Plant at Chelari of the Indian Oil Corporation impleaded as the additional 2nd management. Revision is sought for only for the period 2005-06. The claim put forward in the claim statement is to revise the basic pay payable to the workmen by 50%, dearness allowance by 90%, house rent allowance by 15%, incentives to Rs. 0.15 per cylinder for filling cylinders exceeding 3,00,000 washing allowance to Rs. 100/- and canteen money to Rs. 10 per day *w.e.f.* 01.04.2005.

12. The reasons stated by the unions for revision of wages is that there was no revision of wages for over a period of four years even though there was considerable increase in the cost of living and there was revision of wages in respect of the workers in similarly placed industries during that period.

13. In order to have the revision of wages and other benefits the unions must establish that the payment of wages at the existing rate is inadequate to maintain their living standard due to the increase in the cost of living and that similarly placed workers in other industries in the region are in a better position when compared with their wages. Further more it is also necessary to satisfy that there was increase in the profit of the management to pay more wages to the workmen.

14. First management was engaged as the contractor in April 2002 for a period of one year and the same was extended for a further period of one year each on two occasions with the same rate and other conditions. Thereafter a fresh contract was entered into for a further period of one year. There was a wage revision as per Ext. W1 settlement entered into between the unions and the first management on 08.07.2003. As per that settlement house keeping workmen numbering 19 was given an increase of 14.5% to their wages in the existing scale and the 2nd and 3rd batch comprising 23 workmen were given an increase of 15.5% of their existing scale. Incentive of 8 ps. per cylinder over and above bottling of 3,50,000 cylinders was given and washing allowance was enhanced from Rs. 40/- to 50/-. Increase in dearness allowance and house rent allowance or payment of canteen money do not find a place in Ext. W1. The period of operation of that settlement was from 16.06.2002 to 15.06.2004. The demand for revision of wages for the year 2004-05 did not become fruitful. It is after that the Charter of Demands for revision of wages for 2005-06 was made by the unions. It is not produced in this case to know the claims put forward by the unions. It is not after a period of four years from the date of expiry of the period provided under Ext. W1 but within a period of two years. There is no statutory provision or rule that makes it obligatory to have a periodical revision of wages. There is no clause in Ext. W1 also to have a

revision of the wages after the expiry of the period provided therein.

15. To consider the question of revision of wages it is essential to have the details of the existing wage structure and other benefits at the point of time of revision. The revision of wages is sought to be *w.e.f.* 01.04.2005. There is absolutely no plea in the claim statement with regard to the wage structure and other benefits which is sought to be revised by the unions. No evidence is also forthcoming in this case to find out the wage structure and the other benefits. Ext. W4 would go to show even the workers in the haulage section was divided into three categories based on their seniority and work. There is also nothing to find out the basic pay, DA, HRA, incentive, washing allowance and canteen money as on 01.04.2005. Without having a clear picture of the wage structure of the workers in the different categories it is not possible to know whether it is necessary to have a revision of wages or whether any increase is permissible for each of the different categories of workers.

16. Huge increase in wages and other benefits is demanded by the unions. Apart from that fresh benefits are also sought for without assigning any valid reason. It is difficult to find out whether such demands are reasonable and acceptable with the available evidence.

17. The charter of demands served by the unions with regard to the revision of wages and other benefits is not made available in this case. From Ext. W4 it can be seen that severral demands other than those in respect of which claim is made in the claim statement were also made by the unions. There is nothing to show that canteen money was paid to the workers earlier. There is no plea with regard to it in the claim statement.

18. It is the case of the unions that there was revision of wages of similarly placed employees in other industries in the region. But there is absolutely no evidence in this case to prove the same. WW1 has stated during his cross examination that the settlement with regard to the wages of similarly placed employees in other industries is with him. But it is not produced in this case to satisfy that they are getting more wages than the workmen involved in this case. Since the first management has got a specific case that they are getting more than the wages than the similarly placed workmen in other industries it is incumbent upon the unions to adduce evidence to prove that they were getting leasswer wages when compared to the workmen in other industries.

19. Increase in the cost of living since 16.06.2004 is stated to be a reason for revision of wages. How much increase was there in the cost of living during that time is not substantiated by adducing any reliable evidence.

20. It is the specific case of the first management there was no increase in the payment of the amount by the

principal employer for providing the workmen during that period. The increase in profit of the management to pay more wages is one of the factors to be taken into consideration while dealing with the question of revision of wages. In spite of the contention put forward by the first management there was no attempt on the part of the unions to prove the increase in profit for the first management.

21. Unions cling on the offer made by the first management at the time of conciliation proceedings before the Regional Labour Commissioner (Central) on 17.11.2005 to increase the wages of the workmen from 18.71% to 24% evidenced by Ext.W3, the copy of the minutes of the conciliation proceedings held on 24.02.2006. It was later withdrawn by the management and the same is also evidenced by Ext.W3. The offer so made at the time of conciliation proceedings cannot be made as the basis to have revision of the wages in an adjudication before this tribunal. The offer was not acceptable to the unions and it was agreed to be accepted later. But at that time the first management expressed the inability to have a hike of wages for more than 5%. Whatever transpired in the conciliation proceedings do not assume any relevance while considering the question of revision of wages. It is necessary to have specific pleading with regard to the existing wage structure and also the percentage of increase to be given to each of the categories of workers and acceptable evidence to substantiate the same.

22. The burden cast upon the unions to establish that there must be revision of wages for the period 2005-06 is not fully discharged in this case by making any specific pleading and by adducing any definite evidence. It is also impossible to find out the proportionate increase due to each of the categories of workers in the event of revision of wages. It will be difficult for this Tribunal to pass an award allowing any revision of wages since the award must be specific, clear and unambiguous in such a case. Unions have miserably failed to prove that the first management is liable to revise the wages of the workers during the period 2005-06.

23. *Point No. 3:* Additional 2nd management was impleaded as a party being the principal employer as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. After the impleadment no additional pleading was filed by the unions to make any claim against the additional 2nd management. Though it is alleged that the conditions of service of the workmen are based on tripartite settlements no evidence was adduced to prove the same. No agreement seen to have been signed by the additional 2nd management is produced in this case. But being principal employer the additional 2nd management cannot be said to be not a necessary party as it is necessary to have their presence for the proper adjudication of the dispute. As there is no prayer for any relief no relief need be granted against the additional 2nd management.

24. *Point No. 4:* I have already found that the unions have failed to establish that the first management is liable to revise the wages of the workmen. Hence it can be held that the action of the first management is justified in not revising the wages of those workers for the year 2005-06.

In the result an award is passed finding that the action of the first management is not revising the wages for the workmen for the year 2005-06 is justified.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of December, 2011.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the Unions

WW1 — Shri. Daniel C, General Secretary of Independent Plant Workers Association (IPWA), IOC, Chelari, Malappuram (Kerala).

WITNESS FOR THE MANAGEMENTS—NIL.

Exhibits for the Unions

W1 — Photocopy of the Memorandum of Settlement dated 8.7.2003 signed between the management and the Unions before the Assistant Labour Commissioner (C), Kochi.

W2 — Photocopy of the Failure of Conciliation Report dated 27.07.2005 sent by Assistant Labour Commissioner (C), Kochi to the Secretary to the Government of India, Ministry of Labour, New Delhi.

W3 — Photocopy of the minutes of the conciliation proceedings held between the management and unions before the Regional Labour Commissioner (C), Kochi on 24.02.2006.

W4 — Photocopy of the Failure of Conciliation Report dated 26.04.2006 sent by Regional Labour Commissioner (Central) Cochin to the Secretary, Ministry of Labour & Employment, Rafi Marg, New Delhi.

EXHIBITS FOR THE MANAGEMENT—NIL.

नई दिल्ली, 6 फरवरी, 2012

कांआ० 837.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध प्रियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, हैदराबाद के पंचाट (एलसीआईडी संख्या 43/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 837.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-labour Court, Hyderabad (CGIT/LCID/43/2010)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]

D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 29th day of December, Two thousand and Eleven

PRESENT:

- 1. Sri Ved Prakash Gaur : Presiding Officer
- 2. Sri C. Niranjan Rao : Member
- 3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 43 of 2010/PLAC 72/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN

T. Srinivas, E.C. No. 0433936, S/o Posham, aged about 41 years, Ex-Coal Filler, No. 21-Incline, Yellandu Area, M/s. Singareni Collieries Company Limited, Yellandu, Khammam District PETITIONER

AND

- 1. M/s. Singareni Collieries Company Limited, Rep. by its Director (PA & W), Kothagudem, Khammam District.
- 2. The Chief General Manager, M/s Singareni Collieries Company Ltd. Yellandu Area, Yellandu, Khammam District.
- 3. The Superintendent of Minies, No. 21-Incline, M/s Singareni Collieries Company Ltd., Yellandu Area, Yellandu, Khammam District.RESPONDENTS

This case is coming up before the Lok Adalat on

29.12.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A. V.V.S. Sama on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both sides, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above, the parties/counsel have affixed their signature/thumb impressions in the presence of the members of this Lok Adalat Bench.

Signature of Applicant(s) Signature of Respondent(s)
Signature of Counsel for Applicant(s) Signature of Counsel for Respondent(s)

Signature of Presiding Officer & Members of the Bench

- 1. Ved Prakash Gaur, Chairman
- 2. C. Niranjan Rao, Member

Note: This award is trial and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 838.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, मुम्बई के पंचाट पार्ट-1 (संदर्भ संख्या सीजीआईटी-2/46 आफ 2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.12.2011 को प्राप्त हुआ था।

[सं० एल-12012/84/2003-आईआर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 6th February, 2012

S.O. 838.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award Part-1 (**Ref. No. CGIT-2/46 of 2003**) of the Central Government Industrial Tribunal/Labour Court No. 2, MUMBAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **SYNDICATE BANK** and their workmen, which was received by the Central Government on **20.12.2011**.

[No. L-22012/84/2003-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

K.b. Katake, presiding officer

Reference no. Cgit-2/46 of 2003

EMPLOYERS IN RELATION TO THE MANAGEMENT OF SYNDICATE BANK

The Deputy General Manager
Syndicate Bank
IR Cell, Zonal Office
Maker Tower 'E', 2nd floor
Cuffe Parade
Mumbai-400 005.

AND

THEIR WORKMEN.
Shri Bhimaji Joshi
A/3, Kailas Dham
Gopal Nagar No. 1
Dombivili (E)
Distt. Thane.

APPEARANCES:

For the Employer : Mr. R.N. Shah,
Advocate.

For the Workmen : Mr. Umesh Nabar,
Advocate.

Mumbai, dated the 2nd September, 2011.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/84/2003-IR (B-II), dated 14.08.2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Syndicate Bank, Zonal Office, Mumbai in dismissing Shri Bhimaji Joshi from service w.e.f. 12.10.2001 is legal and justified? If not, what relief the workman, Shri Bhimaji Joshi is entitled to?"

2. After receipt of the reference from the Ministry, both the parties were served with notices. They appeared through their respective representatives. The second party workman filed his statement of claim at Ex-6. According to him, he joined the services of the first party in the year 1969 as a clerk. He was honest, sincere and diligent and worked to the utmost satisfaction of his superior. Therefore in the year 1980 he was promoted to the post of Special Assistant. He has completed almost 30 years of service with clean and unblemished record except the chargesheet dated 20.11.2000 alleging that he had issued cheque books in fictitious names and had used the said cheques for unauthorized withdrawal of money from the Bank.

3. According to him, in April 2000 he received phone call from the Manager of Bhiwandi Branch who informed him that when he was at Bhiwandi Branch, Auditor has observed that balancing of the in operative SB Accounts was not tallying. The Manager therefore requested him to help him in balancing the in operative SB Accounts. The workman helped the Manager, Bhiwandi Branch to tally the in operative SB Accounts. However same could not be tallied for want of records which was washed away due to heavy rains in the year 1998. Accordingly the workman reported the first party that account could not be tallied for want of record.

4. On 13/06/2000, the workman was called at the office of first party bank and he was threatened in presence of Dy. General Manager of the Bank that non-tallying the accounts would have serious adverse effect on the service of the workman. Under threat he was asked to accept the responsibility of the difference in the amount of Rs. 83,000/- . The workman was asked to deposit the said amount otherwise he was threatened to be thrown out of the service of the Bank. He was forced to deposit Rs. 50,000/- on the very next day. On 14.06.2000 the workman was served with an order of suspension. Under pressure he was also forced

to deposit the remaining amount of Rs. 33,000/- and had promised to withdraw the order of suspension. Otherwise they had also threatened to face serious consequences including that of prosecution. He therefore deposited the amount by instalments with a hope that the suspension would be withdrawn and his service would be restored and he would be exonerated. However instead of withdrawing the order of suspension, Manager of Bhiwandi Branch lodged a Police complaint on 18.09.2000 alleging that workman had committed an offence under Section 409, 402 and 201 of IPC. The workman was arrested, two days thereafter, he was released on bail.

5. The workman was served with the charge-sheet dated 20.11.2000 proposing disciplinary proceedings against him. As per the bi-partite settlement, during pendency of the criminal proceeding, disciplinary proceeding ought to have stopped. However the management did not listen to him. They overruled his objection and inquiry was proceeded with. The workman participated in the disciplinary proceeding. The workman has challenged the action in writ petition. However his writ petition was disposed of on technical grounds. The request of workman to defend himself by an advocate was rejected. In the disciplinary proceedings Bank examined five witnesses. The workman also examined himself. Several illegalities were committed by first party in the inquiry proceeding. There was violation of principles of natural justice. His defence and objections were not considered.

6. The inquiry officer wrongly relied on the mere statements of the witnesses. The inquiry was a mere farce. The inquiry officer illegally held him guilty. The inquiry was not fair and proper. The findings of Inquiry officer are perverse. On the basis of report of inquiry officer, the management has dismissed the services of the workman. They imposed the punishment of dismissal, without notice to the workman. The workman has preferred appeal thereagainst. However the appellate authority did not pay attention to the defence of the workman and on 30.01.2002 the appeal of the workman came to be dismissed. Therefore the workman has raised industrial dispute and challenged the order of his illegal dismissal. As the management did not co-operate, the conciliation was failed and ALC (C) had sent his report to the Labour Ministry. The Labour Ministry has sent the reference to this Tribunal. The workman therefore prays that the order of dismissal of the workman from services of first party be declared illegal and same be quashed. The workman also prays for direction to reinstate him with full back-wages and also prays for the costs and other consequential benefits.

7. The first party management resisted the statement of claim *vide* its written statement at Ex.13. According to them, the workman was dismissed from the services of the Bank as he had committed fraud and misappropriation. He was found to have misappropriated an amount of Rs. 10.20

lakhs. Chargesheet was issued to him dated 20.11.2000 for the gross misconduct and his acts prejudicial to the interest of the Bank. While working as Special Assistant at Bhiwandi Branch, he had issued cheque books in fictitious names and used few of the cheques for unauthorized withdrawal of amount from the bank. Similarly another cheque of Rs. 18,000/- was received for collection from Sangli Bank, Dombivli Branch. To conceal his fraud he misplaced/destroyed the 48 paid cheques. He has manipulated the balance while extracting and tallying the SB Balancing. He has manipulated balances which resulted into reduction in balance. By misusing his official position he has committed fraud on the Bank and misappropriated funds of the Bank. He has fraudulently withdrawn an amount aggregating to Rs. 6 lakhs by using 48 cheques and the same came into light. The workman by his letter dated 13.6.2000 addressed to GM, Mumbai admitted having committed the above fraud and also reimbursed an amount of Rs. 83,000/-.

8. The Bank had decided to conduct the inquiry and copy of the chargesheet dt. 20.11.2000 was served on the second party workman. The workman has replied the chargesheet *vide* his reply dated 8.1.2001. Mr. B. Vishwanadham was appointed as Inquiry Officer. He conducted the inquiry. Bank examined five witnesses and filed documents. Sufficient opportunity was given to the workman to defend himself and cross examined the witnesses. He has appointed Mr. Bhaskar Iyer as his defence representative. He cross examined the witnesses. The copies of the documents and proceedings were given to the workman. The second party workman also examined himself and also produced few documents. The second party workman was satisfied with the procedure of inquiry officer. The second party and his defence representative fully participated in the inquiry proceeding. The inquiry officer had given full opportunity to them. The inquiry officer heard the arguments of both the parties and prepared and submitted his report. The inquiry officer held the second party workman guilty of the charges. On the basis of the report of inquiry officer, show cause notice was issued to the second party. He replied the show cause notice. His reply was found not satisfactory. Therefore the management has dismissed the second party workman from their services.

9. The Bank had also lodged the FIR. However the trial had not begun even after a year and bank has not committed breach of the provisions of the clause 19.4 of the Bipartite Settlement. The second party workman was held guilty for serious charges of fraud and misappropriation. Therefore his services were terminated. He was given full opportunity to defend himself. Thus the management pray that the reference be dismissed with cost.

10. Following are the preliminary issues for my determination framed by my I.d. predecessor. I record my findings thereon for the reasons to follow:

Sr. No.	Issues Findings
1.	Whether the inquiry is fair and proper? Yes.
2.	Whether the findings of the inquiry officer are perverse?

REASONS

Issue no. 1:—

11. In this respect the fact is not denied by the second party workman that he was served with the charge-sheet. He had also replied the same *vide* his reply dated 8/1/2001. The workman also admitted in his cross that he participated in the inquiry and the Secretary of the Union Mr. Bhaskar Iyer represented him. He also admitted that Mr. Bhaskar Iyer represented him as per his choice. In his cross examination at Ex-17 the second party workman also admitted that, the inquiry officer explained him about the inquiry. He was shown the inquiry proceeding. His defence representative has signed each page of the inquiry proceeding. He admitted that proceeding was recorded as it happened. He has also admitted that, as per the directions of the inquiry officer, the copies of the documents were given to him. He admitted that in the Bipartite settlement, there is no provision to take help of advocate as D.R. in the domestic inquiry. He admitted that time was given for cross examination of the witnesses of the management and his representative thoroughly cross examined the management witnesses. He further admitted that 45 copies of the documents relied upon by the management, were served on him. He also admitted that management was also not represented by practicing lawyer. He further admitted that findings of the inquiry officer were supplied to him and he replied the same. He also admitted that the inquiry officer gave his findings based on the documentary evidence and the evidence of both the sides. He also admitted that he has not made any prayer to stay the inquiry proceeding before any court of forum during pendency of the criminal trial. He also admitted that whatever documents were produced by him were taken on record by the inquiry officer. These replies and admissions given by the second party workman support the version of the first party management that, they have followed the procedure and sufficient opportunity was given to the workman to defend himself. It also supports their version that the inquiry officer has followed the due procedure while conducting the inquiry. Copies of all the documents were given to the second party workman and the entire proceeding was shown to the workman and his defence representative. His defence representative has signed each page of the proceeding. Further more he has admitted that his defence representative cross examined the management witnesses. From all these, it is clear that, fair, proper and sufficient opportunity was given to the second party workman to defend himself in the inquiry proceeding. The contention

of the second party workman thus does not stand to reasons that, there was violation of principles of natural justice in conducting the departmental inquiry.

12. The main contention of the second party workman is that he was not allowed to engage any practicing advocate. His second objection is that, the inquiry was not stayed, though in respect of the same matter a criminal case was pending in the court. According to the second party workman, the inquiry ought to have stayed till decision of the criminal court in the criminal case pending against him. It was pleaded that first party was represented by a practicing lawyer and inquiry officer refused the second party workman to engage a practicing lawyer. In this respect Id. Adv. of the first party rightly pointed out that, the second party workman himself has admitted, in the cross that, the first party was also not represented by a practicing lawyer. He had admitted in his cross that his representative Mr. Bhaskar Iyer the General Secretary of the Union, was appointed as per his choice. In the circumstances, the version of the second party is devoid of merit that, the first party was represented by a practicing lawyer and that, he did not get proper the opportunity to defend himself through a practicing lawyer.

13. The second objection of the second party workman is that, the inquiry officer did not stay the inquiry, though the criminal case in respect of the same incident was pending before the criminal court. It is also submitted on behalf of the second party workman that the second party workman was acquitted in the criminal case bearing no. 199/2001. The second party workman has not produced certified copy of the judgment. He has produced xerox copy of the judgment with list Ex-18. It cannot be read in evidence as it is a mere xerox copy attested by a notary. Though the certified copy of the judgment is not on record the first party has not disputed that, the workman was acquitted by the court concern.

14. In this respect the Id. Adv. of the first party, submitted that, acquittal by criminal court has no effect either on the inquiry proceeding and the findings therein. It is a fact that, the inquiry officer proceeded with the inquiry and had not stayed the proceeding till decision of the criminal case. It is a fact that, the Bank had lodged the FIR on 18/9/2000. Police filed charge-sheet against the second party on 5/3/2001 and procedure of recording evidence began after December 2001. It shows that the criminal court took time of more than a year to start recording evidence in the criminal proceeding. It took more than a year to start recording the evidence. In the circumstances, it was unnecessary for the inquiry officer to wait till the decision of the criminal court. In respect acquittal by the criminal court, law is laid down by the Apex Court in number of rulings that, though the employee is acquitted, departmental proceeding against him need not be dropped. The Id. Adv. for the first party has resorted to recent Bombay High Court

ruling in **A.S. Manjrekar V/s. Mumbai Port Trust & Anr.** 2010 (II) CLR 590 wherein Hon'ble Court cited number of Apex Court rulings and held that the inquiry proceeding need not be dropped as the employee is acquitted in a criminal case. In this judgment Hon'ble court referred to Apex Court ruling in **Commissioner of Police, New Delhi V/s. Narender Singh 2006 (109) FLR 852** wherein the Hon'ble Apex Court observed that:

"It is now well settled by reasons of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a grant to institute a departmental proceeding against him or to drop the same in the even of an order of acquittal is passed."

The Hon'ble High Court also referred a recent Apex Court ruling in the **management of Western Bokaro Colliery of M/s. Tisco Ltd. V/s. The concerned workman Ram Pravesh Singh** (AIR 2008 SC 1162) wherein the Hon'ble court observed that:

"It has repeatedly been held by this court that the acquittal in a criminal case would not operate as a bar for drawing up a disciplinary proceeding against a delinquent. It is well settled principle of law that, yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in departmental proceedings is preponderance of probabilities."

15. The Id Adv. for the first party also resorted to few more rulings on the same point wherein the same principles of law are reiterated. It is unnecessary to cite all these rulings. In the light of ratio laid down by the Hon'ble Apex Court, it is clear that the order of acquittal passed by a criminal court would not affect the departmental inquiry proceedings and findings therein, as in criminal proceedings requirement of proof is beyond all reasonable doubts, whereas in departmental inquiry, preponderance of probability suffice the purpose. In the circumstances though the workman herein was acquitted by the criminal court, it has no effect on the departmental inquiry proceedings. Therefore though departmental proceeding was started before the decision of criminal court and the employee was acquitted in the criminal of case, it does not give any set back to the departmental inquiry and findings therein. In short though the employee herein was subsequently acquitted by the criminal court, the departmental inquiry and findings therein, cannot be called unfair or improper on the ground of his acquittal. Further more the inquiry was not commenced within a year after filing of the charge-sheet, before the criminal court. Thus it can not be said that there was breach of Bipartite Settlement clause 19.4 thereof.

16. In the light of above discussion it is clear that neither there was violation of principles of natural justice nor inquiry officer was at fault in following the procedure of inquiry. On the other hand fair and sufficient opportunity was given to the employee to defend himself through the defence representative of his choice. All the witnesses were made available for cross examination and they were elaborately cross examined. Copies of all the documents were given to him. The workman was allowed to lead his evidence. The documents produced by him were taken on record. The workman has admitted all these facts in his cross. From all these it is clear that, the Inquiry Officer has followed the fair and proper procedure in conducting the inquiry. Thus I hold that, the inquiry was fair and proper. Accordingly I decide this issue No. 1 in the affirmative.

Issue No. 2:—

17. To arrive at the conclusion and the findings, the inquiry officer has scrutinized the evidence of five witnesses. All of them have supported the case of the management that the second party workman was attacked to Bhiwandi branch at the relevant time. He has wrongly shown that the balance-sheet was tallied. It has come on record that he has issued the cheque book in fictitious name. The record was in his possession. These cheques were found missing from the record. In addition to that, the second party workman has not only admitted the guilt but has also deposited an amount of Rs. 83000/- towards the repayment. He has also given a letter wherein he has admitted to have misused the cheques and had transferred the amounts in the accounts of his relatives and friends. He had also confessed to have destroyed the en-cashed cheques. The inquiry officer has arrived at the conclusion in the light of evidence of five witnesses examined by the management, the documents produced in the inquiry proceedings, the replies given by the second party workman and in the light of facts that the encashed cheques were not found in the bundle of the relevant dates in the record of the Bank. In addition to that, the workman has also given letter admitting to have played the mischief. Though subsequently the workman has retracted the confession, by saying that he has given the confession under pressure and force of the higher officer is unacceptable. The version of the workman that he has given the letter of confession by pressure of higher authority does not stand to reasons. On the other hand, his letter of confession appears to have given voluntarily. Neither the higher officers are police officers nor there is any allegation that he was detained or tortured to give confession. On the other hand, the second party is a responsible officer of the Bank and had no reason to confess the guilt without committing the mischief.

18. In short, the inquiry conducted by the inquiry officer was fair and proper. He has arrived at the conclusion on the strength of evidence of five witnesses examined by the bank and the documents produced by the Bank. He

also used the replies of the employees given in his cross examination. The findings of the inquiry officer are well reasoned and from the evidence before him. From all these facts and circumstances, it is revealed that there cannot be any other conclusion, than the conclusion drawn by the inquiry officer, by which he held the workman guilty. In this backdrop, I reached to the conclusion that the findings of inquiry officer recorded in the inquiry report, holding the workman guilty cannot be called perverse. On the other hand they are well reasoned findings recorded by the inquiry officer. Accordingly, I decide this issue no. 2 in the negative. Now the only point remains to be decided is whether the punishment is proportionate to the misconduct. To decide this issue there is no much scope for oral evidence. To decide this point arguments would suffice the purpose. Thus I proceed to pass the following order:

ORDER

The inquiry conducted by the inquiry officer is found fair and proper. The findings of inquiry officer are not perverse. The parties to remain present on 30/12/2011 for arguments/evidence if any, on the point of quantum of punishment.

Date: 2nd Sept. 2011.

K.B. KATAKE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का०आ० 839.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों ओर उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, हैदराबाद के पंचाट (एलसीआईडी संख्या 44/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डॉ० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 839.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby published the award of the *Cent. Govt. Indus. tribunal-cum-Labour Court, Hyderabad (GCIT/LCID/44/2008)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR (C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, To thousand and Eleven

PRESENT:

- | | | |
|-------------------------|---|-------------------|
| 1. Sri Ved Prakash Gaur | : | Presiding officer |
| 2. Sri C. Niranjan Rao | : | Member |
| 3. Sri | : | Member |

(Constituted U/s 19 of the LSA Aft, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-08-2006)

In the matter of case No. LCID No. 44 of 2008/PLAC 60/2011 (On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN:

Bathula Ramakrishna (EC No. 2894073), S/o Devaiah, aged about 37 years,

Worked as Coal filler at RK-7 incline, Srirampur Area, Singareni Collieries Company Limited, Srirampur Adilabad Distt.,

...Petitioner

And

1. The Singareni Collieries Company Limited, represented by its General Manager, Srirampur Area, Srirampur, Adilabad District.

2. The Colliery Manager,
RK-7, incline, Srirampur Area,
Singareni Collieries Company Limited,
Srirampur, Adilabad District

...Respondents

This case is coming up before the Lok Adalat on 16.12.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri M.V.H. Rao on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and

explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. Sd/.
Signature of Applicant(s) Signature of Respondent (s)

Sd/. Sd/.
Signature of Counsel for Applicant (s) Signature of Counsel for Respondent (s)

Signature of Presiding Officer and Members of the Bench
 1. Ved Prakash Gaur, 2. C. Niranjan Rao,
 Chairman Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 840.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस०सी०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 39/2010) को

प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
 डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 840.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Government Industrial Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/39/2010)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR (C-II)]
 D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, Two thousand and Eleven

Present:

- | | | |
|-------------------------|---|-------------------|
| 1. Sri Ved Prakash Gaur | : | Presiding Officer |
| 2. Sri C. Niranjan Rao | : | Member |
| 3. Sri | : | Member |

(Constituted U/s 19 of the LSA Aft, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-08-2006)

In the matter of case No. LCID No. 59 of 2011/
 PLAC 59/2011

(On the file of CGIT cum Labour Court at Hyderabad)

Between:

Paidipalli Thirupathi, (EC. No. 0888482), S/o Rajam, aged about 40 years, Ex-Coal Filler at GDK No. 1 and 3 Incline,
 Singareni Collieries Company Limited,
 Ramagundam Area-I, Karimnagar Dist.,

Petitioner

AND

1. The Singareni Collieries Company Limited,
 Rep. by its Chief General Manager,
 Ramagundam Area-I, Karimnagar District.

2. The Superintendent of Mines,
GDK-1 and 3 Incline, Singareni Collieries Company
Ltd.,
Ramagundam Area, Karimnagar District.

Respondents

This case is coming up before the Lok Adalat on 16-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both sides, the Lok Adalat has arrived at the following settlement and delivered the following:

Award under section 21 of the I.s.a. Act, 1987

The petitioner had agreed to the following proposals of the management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above, the parties/counsel have

affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/.

Sd/.

Signature of Applicant(s)

Signature of Respondent (s)

Sd/.

Sd/.

Signature of Counsel
for Applicant (s)

Signature of Counsel
for Respondent (s)

Signature of Presiding Officer and Members of the
Bench

1. Ved Prakash Gaur, Chairman

2. C. Niranjan Rao

Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 841.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकारण, हैदराबाद के पंचाट (एलसीआईडी संख्या 36/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012 - आई आर (सी-II)]
डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 841.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/36/2010)* as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR (C-II)]
D.S.S. SRINTIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad

Under Section 20 of the Legal Services Authorities Act,
1987)

The 16th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur : Presiding Officer.
 2. Sri C. Niranjan Rao : Member
 3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 36 of 2010/PLAC 58/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN

Kampa Madhu, (EC No. 2915170) S/o Rajaiah, aged about 28 years,
 worked as Badli Filler at IK-1A Incline,
 Singareni Collieries Company Limited,
 Srirampur Area, Srirampur, Adilabad District
Petitioner

AND

1. The Singareni Collieries Company Limited,
 rep. by its General Manager,
 Srirampur Area, Srirampur, Adilabad District.
 2. The Superintendent of Mines,
 Singareni Collieries Company Ltd.,
 IK-1A Incline, Srirampur Area, Srirampur,
 Abilabad District
Respondents

This case is coming up before the Lok Adalat on 16-12-2011 for settlement in the presence of the applicant appearing in person / represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person / represented by his counsel, Sri S. M. Subhani on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Filler** without back wages and continuity of service subject to medical fitness by Company Medical Board.
- Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Filler** afresh on

- The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as **Badli Filler** afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd./	Sd./
Signature of Applicants(s)	Signature of Respondent(s)
Sd./	Sd./
Signature of Counsel for Applicant (s)	Signature of Counsel for Respondent (s)
Signature of Presiding Officer & Members of the Bench	
1. Ved Prakash Gaur, Chairman	2. C. Niranjan Rao, Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

कांआ० 842.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, हैदराबाद के पंचाट (एलसीआईडी संख्या 22/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012 - आई आर (सी-II)]
 डॉ०एस०श्रीनिवास राव), डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 842.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/22/2010)* as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR (C-II)]
D.S.S. SRINIVASARAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad

Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, Two thousand and Eleven

PRESENT:

- 1. Sri Ved Prakash Gaur : Presiding Officer.
- 2. Sri C. Niranjan Rao : Member
- 3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006, dt. 22-8-2006)

In the matter of case No. LCID No. 22 of 2010/PLAC 57/2011

(On the file of CGIT-cum-Labour Court at Hyderabad)

BETWEEN

Kampelli Nagaraju, (EC. No. 0999568), S/o Kondaiah, aged about 28 years, Ex-Badli Filler at GDK-2A Incline, Singareni Collieries Company Limited, Godavarikhani, Karimnagar Dist.

.....Petitioner

AND

- 1. The Singareni Collieries Company Limited, rep. by its Chief General Manager, RG-I Area, Godavarikhani, Karimnagar Dist.
- 2. The Superintendent of Mines, GDK-2A Incline, Singareni Collieries Company Limited, Godavarikhani, Karimnagar Dist.

.....Respondents

This case is coming up before the Lok Adalat on 16-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri S.M. Subhani on

a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Filler** without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Filler** afresh on
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as **Badli Filler** afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd./

Sd./

Signature of Applicant(s)

Signature of Respondent(s)

Sd./

Sd./

Signature of Counsel for
Applicant(s)

Signature of Counsel
for Respondent(s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, Chairman

2. C. Niranjan Rao,

Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of L.S.A. Act 1987.

नई दिल्ली, 6 फरवरी, 2012

.....PETITIONER

का०आ० 843.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसभसी०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 19/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डौ०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 843.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad (CGIT/LCID/19/2010)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR (C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE**IN THE LOK ADALAT**

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad

Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, Two thousand and Eleven

PRESENT:

- 1. Sri Ved Prakash Gaur : Presiding Officer.
- 2. Sri C. Niranjan Rao : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006, dt. 22-8-2006)

In the matter of case No. LCID No. 19 of 2010/PLAC 56/ 2011

(On the file of CGIT-cum-Labour Court at Hyderabad)

BETWEEN

Shaik Gaji Nawab, (EC. No. 287181), S/o Sk. Gude, aged about 43 years,
Ex-General Mazdoor at VK No. 7 Incline,
Singareni Collieries Company Limited,
Kothagudem Area, Khammam Dist.

AND

- 1. The Singareni Collieries Company Limited, rep. by its Chief General Manager, Kothagudem Area, Khammam Dist.
- 2. The Colliery Manager, VK-7 Incline, Singareni Collieries Company Limited, Kothagudem Area, Khammam Dist.

.....RESPONDENTS

This case is coming up before the Lok Adalat on 16-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri S.M. Subhani on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner has put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Filler** without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Filler** afresh on
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced abasenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as **Badli**

Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/- Sd/-

Signature of Applicant(s) Signature of Respondent(s)

Sd/- Sd/-

Signature of Counsel for Applicant(s) Signature of Counsel for Respondent(s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, Chairman 2. C. Niranjan Rao,
Mamber

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of L.S.A. Act, 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 844.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस०स०एल०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 11/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 प्राप्त हुआ था।

[सं० एल-22013/1/2012-आईआर०(सी-II)]
डी०एस०एस० श्रीनिवास, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 844.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of ***the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/11/2010)*** as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of **SCCL** and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour

Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur : Presiding Officer
2. Shri C. Niranjan Rao : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006, dt. 22-8-2006)

In the matter of case No. LCID No. 11 of 2010/PLAC 55/2011

(On the file of CGIT-cum-Labour Court at Hyderabad)

BETWEEN

Gouravelli Krishna (EC No. 0980878),
S/o Rama Rao,
age about 39 years, Ex. Coal Cutter at GDK-1A
Incline,
Singareni Collieries Company Limited,
RG-I Area, Godavarikhani, Karimnagar District

PETITIONER

AND

1. The Singareni Collieries Company Limited, rep. by its Chief General Manager, Ramagundam Area-I, Ramagundam, Karimnagar District.
2. The Superintendent of Mines, Singareni Collieries Company Ltd., GDK-II Incline, Godavarikhani, Karimnagar District.

RESPONDENTS

This case is coming up before the Lok Adalat on 16-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Filler**

- without back wages and continuity of service subject to medical fitness by Company Medical Board.
- Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Filler** afresh on.
 - The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
 - Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
 - All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as **Badli Filler** afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-	Sd/-
Signature of Applicant(s)	Signature of Respondent (s)
Sd/-	Sd/-
Signature of Counsel for Applicant(s)	Signature of Counsel for Respondent(s)
Signature of Presiding Officer & Members of the Bench	
1. Ved Prakash Gaur, Chairman	2. C. Niranjan Rao, Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of L.S.A. ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 845.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 95/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 प्राप्त हुआ था।

[सं० एल-22013/1/2012-आईआर०(सी-II)]
डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 845.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/95/2009)** as shown in the Annexure in the Industrial Dispute between the employers in relation to the management **SCCL** and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, Two thousand and Eleven

PRESENT:

- | | | |
|-------------------------|---|-------------------|
| 1. Sri Ved Prakash Gaur | : | Presiding Officer |
| 2. Sri C. Niranjan Rao | : | Member |

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006, dt. 22-8-2006)

In the matter of case No. LCID No. 95 of 2009/PLAC 63/ 2011

(On the file of CGIT-cum-Labour Court at Hyderabad)

BETWEEN

Gopisetty Krishna Reddy, (EC No. 2364086), S/o Nasi Reddy,
aged about 38 years, worked as Badlifiller, Kasipet Mine,
Singareni Collieries Company Limited,
Mandamarri Area, Adilabad District.

...PETITIONER

AND

- The Singareni Collieries Company Limited, rep. by its General Manager, Mandamarri, Mandamarri Area, Adilabad District.
- The Superintendent of Mines, Singareni Collieries Company Ltd., Kasipet Mine, Mandamarri Area, Adilabad District.

...RESPONDENTS

This case is coming up before the Lok Adalat on 16-12-2011 for settlement in the presence of the applicant

appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri M.V.H. Rao on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Filler** without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Filler** afresh on.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as **Badli Filler** afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/- Sd/-

Signature of Applicant(s) Signature of Respondent(s)

Sd/- Sd/-

Signature of Counsel for Signature of Counsel for
Applicant(s) Respondent(s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, Chairman	2. C. Niranjan Rao, Member
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Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of L.S.A. ACT, 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 846.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 123/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 846.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/123/2006)** as shown in the Annexure in the Industrial Dispute between the employers in relation to the management **SCCL** and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur : Presiding Officer
2. Sri C. Niranjan Rao : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006, dt. 22-8-2006)

In the matter of case No. LCID No. 123 of 2006/
PLAC 64/2011

(On the file of CGIT-cum-Labour Court at Hyderabad)

BETWEEN

Erroju Satyanarayana (EC No. 2359099), S/o Venkatesham, aged about 40 years, Ex-Badli Filler, KK-5 Incline,

Singareni Collieries Company Limited,
Mandamarri Area, Adilabad District.

...PETITIONER

AND

1. Singareni Collieries Company Limited,
rep. by its General Manager,
Mandamarri Area, Mandamarri
Adilabad District.
2. The Superintendent of Mines,
KK-5 Incline, Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri
Adilabad District.

... RESPONDENTS

This case is coming up before the Lok Adalat on 16-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Filler** without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Filler** afresh on.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as **Badli**

Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-

Sd/-

Signature of Applicant(s)

Signature of Respondent(s)

Sd/-

Sd/-

Signature of Counsel
for Applicant(s)

Signature of Counsel for
Respondent(s)

Signature of Presiding Officer & Members of the Bench

- | | |
|-------------------------------|-------------------------------|
| 1. Ved Prakash Gaur, Chairman | 2. C. Niranjan Rao,
Member |
|-------------------------------|-------------------------------|

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 847.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 83/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/2/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी.एस.एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 847.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/83/2007)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012

[No. L-22013/1/2012-IR (C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

The 16th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur : Presiding Officer.

2. Sri C. Niranjan Rao : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006, dt. 22.8.2006)

In the matter of case No. LCID No. 83 of 2007/PLAC 61/2011

(On the file of CGIT-cum-Labour Court at Hyderabad)

BETWEEN

Rodda Shyam Kumar, (EC No. 2904933), S/o. Kanakaiah, aged about 33 years, worked as Coal Filler at RK-6 Incline, Singareni Collieries Company Limited, Srirampur Area, Srirampru, Adilabad Dist.

PETITIONER

AND

1. The Singareni Collieries Company Limited, rep. by its Director (PA & W), Kothagudem, Khammam District.

2. The Chief General Manager, Singareni Collieries Company Ltd., Srirampur Area, Srirampru, Adilabad Dist.

3. The Superintendent of Mines, RK-6 Incline, Singareni Collieries Company Ltd., Srirampur Area, Srirampru, Adilabad Dist.

..RESPONDENTS

This case is coming up before the Lok Adalat on 16.12.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Filler** without back wages and continuity of service subject to medical fitness by Company Medical Board.
- Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Filler** afresh on.
- The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every

month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.

- Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take his back to duty as **Badli Filler** afresh.

In agreement of the above, the parites/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-

Sd/-

Signature of Applicant(s)

Signature of Respondent (s)

Sd/-

Sd/-

Signature of Counsel
for Applicant (s)

Signature of Counsel
for Respondent (s)

Signaute of Presiding Officer & Members of the Bench

- Sh. Ved Prakash Gaur, Chairman
- C. Niranjan Rao, Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of L.S.A. ACT, 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 848.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 18/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी.एस.एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 848.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/18/2008)** as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of **SCCL** and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR (C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 9th day of September, Two thousand and Eleven

PRESENT:

- 1. Sri Ved Prakash Gaur : Presiding Officer.
- 2. Sri C. Niranjan Rao : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22.8.2006)

In the matter of case No. LCID No. 18 of 2008/PLAC 47/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN:

Naini Rajesham, (EC. No. 2574665), S/o Laxmaiah, aged about 47 years,
EX-Coal Filler, RK-NT Incline,
Singareni Collieries Company Limited,
Srirampur Area, Srirampur, Adilabad District

.....Petitioner

AND

- 1. The Singareni Collieries Company Limited, rep. by its Chief General Manager, Srirampur Area, Srirampur, Adilabad Distt.
- 2. The Superintendent of Mines, RK-NT Incline, Singareni Collries Company Limited, Srirampur Area, Srirampur, Adilabad Distt.

---Respondents

This case is coming up before the Lok Adalat on 9.9.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri H.V. Hanumantha Rao on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by

him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling, wherever coal filling is available and need not be the same place where the workmen was last employed.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filler afresh wherever coal filling is available.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/- Signature of Applicant(s) Sd/- Signature of Respondent (s)

Sd/- Signature of Counsel Sd/- Signature of Counsel for Applicant (s) for Respondent (s)

Signaute of Presiding Officer & Members of the Bench

- 1. Ved Prakash Gaur, 2. C. Niranjan Rao, Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 849.—ओद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 42/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डॉ०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi the 6th February, 2012

S.O. 849.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/42/2009)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASARAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad

Under Section 20 of the Legal Services Authorities Act, 1987)

the 9th day of September, Two thousand and Eleven

PRESENT:

- 1. Sri Ved Prakash Gaur : Presiding Officer.
- 2. Sri C. Niranjan Rao : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22.8.2006)

In the matter of case No. LCID No. 42 of 2009 PLAC 49/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN:

Muthyala Kumara Swamy (EC No. 0992922), S/o Venkataiah, aged about 42 years, ex-Badli Filler at GDK 2A- Incline, Signareni Collieries Company Ltd., Godavarikhani, Karimnagar District.Petitioner

AND

- 1. The Signareni Collieries Ltd., rep. by its General Manager, Ramagundam Area-I, Ramagundam, Karimnagar District
 - 2. The Colliery Manager/Superintendent of Mines, Signareni Collieries Company Limited, GDK-2A Incline, Karimnagar District
-Respondents

This case is coming up before the Lok Adalat on 9.9.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri S. M. Subhani on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side,

the lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appintment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling, wherever coal filling is available and need not be the same place where the workmen was last employed.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filler afresh wherever coal filling is available.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-

Sd/-

Signature of Applicant(s)

Signature of Respondent (s)

Sd/-

Sd/-

Signature of Counsel
for Applicant (s)

Signature of Counsel
for Respondent (s)

Signature of Presiding Officer & Members of the Bench

- 1. Ved Prakash Gaur, 2. C. Niranjan Rao,
Chairman Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, Chairman	2. C. Niranjan Rao, Member
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Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 851.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या - 76/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी.एस.एस. श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 851.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the (**Cent. Govt. Indus. Tribunal-cum-labour Court, Hyderabad (CGIT/LCID/76/2008)**) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

INTHE LOKADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 9th day of September, Two thousand and Eleven

PRESENT:

- 1. Sri Ved Prakash Gaur : Presiding Officer.
- 2. Sri C.Niranjan Rao : Member
- 3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APGLSA Order ROC No. 186/LSA/2006, dt. 22-8-2006)

In the matter of case No. LCID No. 76 of 2008/PLAC 52/2011

(On the file of CGIT-cum-Labour Court at Hyderabad)

BETWEEN:

Thogari Nagesh, (EC No. 0995522), S/o Ramadas, aged about 33 years, worked as Badli Filler at GDK-6A Incline, Singareni Collieries Company Limited, Godavarikhani, Karimnagar Dist.

Petitioner

AND

- 1. The Singareni Collieries Company Limited, rep. by its Chief General Manager, Ramagundam Area-I, Godavarikhani, Karimnagar District.
- 2. The Superintendent of Mines, GDK-1 Incline Singareni Collieries Company Ltd., Godavarikhani, Karimnagar District.

Respondents

This case is coming up before the Lok Adalat on 9-9-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as **Badli Coal Filler** without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as **Badli Coal Filler** afresh on Coal filling, wherever coal filling is available and need not be the same place where the workmen was last employed.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. On coal filing only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

one year with minimum mandatory 20 musters every months and review every three months on coal filing only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.

- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filler aftresh wherever coal filling is available.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/- Sd/-
Signature of Applicant(s) Signature of Respondent (s)

Sd/- Sd/-
Signature of Counsel Signature of Counsel
for Applicant (s) for Respondent (s)

Signature of Presiding Officer & Members of the Bench
1. Ved Prakash Gaur, Chairman 2. C. Niranjan Rao,
Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 853.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 101/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी० एस० एस० श्रीनिवास गव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 853.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/101/2007)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was

received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S.SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad

Under Section 20 of the Legal Services Authorities Act, 1987)

the 9th day of September Two thousand and Eleven

Present:

1. Sri Ved Prakash Gaur	:	Presiding Officer.
2. Sri C. Niranjan Rao	:	Member
3. Sri	:	Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22.8.2006)

In the matter of case No. LCID No. 101 of 2007/PLAC 53/2011

(On the file of CGIT cum Labour Court at Hyderabad)

Between:

Muthyala Sadanandam, (EC No. 0993994), S/o Lingaiah, aged about 37 years, worked as Badli Filler at GDK-7 (L.E) Project,
Singareni Collieries Company Limited,
Godavarikhani, Karimnagar Dist ... Petitioner

AND

1. The Singareni Collieries Company Limited, rep. by its Chief General Manager, RG-1 Area, Godavarikhani, Karimnagar District.
2. The Colliery Manager, GDK-7 (L.E) Project, Singareni Collieries Company Ltd., Godavarikhani, Karimnagar District.

.....Respondents

This case is coming up before the Lok Adalat on 9-9-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma on a persusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of

dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. the petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling, Wherever coal filling is available and need not be the same place where the workmen was last employed.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every months and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filler afresh wherever coal filling is available.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/ illegible	Sd/ illegible
Signature of Applicant (s)	Signature of Respondent (s)
Sd/ illegible	Sd/ illegible
Signature of Counsel for Applicant (s)	Signature of Counsel for Respondent (s)
Signature of Presiding Officer & Members of the Bench	
1. Ved Prakash Gaur,	2. C. Niranjan Rao,
Chairman	Member

Note: This Award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 854.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 143/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 854.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad* (CGIT/LCID/143/2006) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 29th day of December, Two thousand and Eleven

PRESENT:

- | | |
|---------------------------|-------------------|
| 1. Sri Ved Prakash Gaur : | Presiding Officer |
| 2. Sri C. Niranjan Rao : | Member |
| 3. Sri : | Member |

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 143 of 2006/PLAC 74/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN:

Birudula Shekar, (EC No. 2892411), S/o Mallaiah, aged about 45 years,
Ex-Badli filler IK-1A Incline, SRP Division,
Singareni Collieries Company Ltd., Srirampur,
Adilabad District Petitioner

AND

1. The Singareni Collieries Company Limited, rep. by its General Manager, Srirampur (P) Area, Adilabad Dist.
2. The Colliery Manager, IK-1A Incline, Singareni Collieries Company Ltd., Srirampur, Srirampur (P) Area, Adilabad District.

.....Respondents

This case is coming up before the Lok Adalat on 29.12.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarna on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following.

AWARD UNDER SECTION 21 OF THE L.S.A.

ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on.
- c. The Petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. illegible Sd/. illegible

Signature of Applicant(s) Signature of Respondent (s)

Sd/. illegible Sd/. illegible

Signature of Counsel for Applicant (s) Signature of Counsel for Respondent (s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, Chairman 2. C.Niranjan Rao,
Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. Act 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 855.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 134/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डॉ०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 855.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt, Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/134/2007)* as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of case relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 29th day of December, two thousand and Eleven

Present:

- | | |
|---------------------------|--------------------|
| 1. Sri Ved Prakash Gaur : | Presiding Officer. |
| 2. Sri C. Niranjan Rao : | Member |
| 3. Sri : | Member |

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 134 of 2007/PLAC
73/2011

(On the file of CGIT cum Labour Court at Hyderabad)

Between

Goleti Malliah,) (EC No. 2083957), S/o Ankulu, aged about 45 years, worked as Coal Filler at Goleti-1 Incline, Singareni Collieries Company Limited, Bellampally, Adilabad Dist.

....Petitioner

AND

1. The Singareni Collieries Company Limited, rep. by its General Manager, Bellampalli (Projects), Bellampalli, Adilabad Dist.
2. The Superintendent of Mines, Singareni Collieries Company Ltd., Goleri-1, Incline, Bellampalli, Adilabad Dist.

....Respondents

This case is coming up before the Lok Adalat on 29.12.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri M.V.H. Rao on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both sides, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on.
- The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- All other usual terms and conditions of appointment will be applicable i.e. transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/ illegible Signature of Applicant(s)	Sd/ illegible Signature of Respondent (s)
Sd/- Signature of Counsel for Applicant (s)	Sd/- Signature of Counsel for Respondent (s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, Chairman	2. C. Niranjan Rao, Member
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Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

कांआ० 856.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 35/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डॉ०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 856.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Governemnt hereby publishes the award of the *Cent. Govt. Indust. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/35/2007)* as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of *SCCL* and their workmen, which was received by the Central Governemnt on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S.SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 9th day of September Two thousand and Eleven

Present:

1. Sri Ved Prakash Gaur : Presiding Officer.
2. Sri C. Niranjan Rao : Member
3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the

APSLA Order ROC No.. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 35 of 2007/
PLAC 48/2011

(On the file of CGIT cum Labour Court at
Hyderabad)

BETWEEN:

Talla Ramesh, (EC.No.2904886), S/o Narsaiah,
aged about 31 years,
Ex-Badli Filler, IK-1 Incline, Singareni Collieries Company
Ltd., Sri Rampur, Adilabad District

.... Petitioner

And

1. The Singareni Collieries Company Ltd.,
rep. by its Director (PA & W),
Kothagudem, Khammam District.
2. The Superintendent of Mines,
Singareni Collieries Company Ltd.,
IK-1 Incline, Srirampur Projects Area, Srirampur
(Projects),
Srirampur Adilabad District. **.... Respondents**

This case is coming up before the Lok Adalat on 9-9-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri M. V. Hanumantha Rao on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling, wherever coal filling is available and

need not be the same place where the workmen was last employed.

- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months on coal filing only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filer afresh wherever coal filling is available.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-	Sd/-
Signature of Applicant(s)	Signature of Respondent (s)
Sd/-	Sd/-
Signature of Counsel forApplicant (s)	Signature of Counsel for Respondent (s)
Signature of Presiding Officer & Members of the Bench	
1. Ved Prakash Gaur,	2. C. Niranjan Rao,
Chairman	Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 857.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 38/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आईआर (सी-II)]
डॉ एस० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 857.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/ LCID/38/2009)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]

D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 29th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur : Presiding Officer.
2. Sri C. Niranjan Rao : Member
3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 38 of 2009/PLAC 71/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN:

Chilumula Ravi, S/o Lingaiah, (E.C. No. 2360090) aged about 31 years, Ex-Coal Filler at MK-4 Incline, Singareni Collieries Company Limited, Mandamarri Area, Mandamarri, Adilabad District

....PETITIONER

And

1. The Singareni Collieries Company Ltd., rep. by its General Manager, Mandamarri Area, Mandamarri, Adilabad District.
2. The Colliery Manager,, MK-4 Incline, Singareni Collieries Company Limited, Mandamarri Area, Mandamarri, Adilabad District

....Respondents

This case is coming up before the Lok Adalat on 29-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri M. V. H. Rao on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side,

the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. illegible Sd/. illegible

Signature of Applicant(s) Signature of Respondent (s)

Sd/. illegible Sd/. illegible

Signature of Counsel for Applicant (s) Signature of Counsel Respondent (s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, 2. C. Niranjan Rao, Chairman Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 858.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 20/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012 -आई आर (सी-II)]
डी० एस० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. b858.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/20/2010)* as shown in the Annexure in the Industrial dispute between the employers in relation to the management of *SCCL* and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

the 29th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur, Presiding Officer.
2. Sri C. Niranjan Rao, Member
3. Sri, Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 20 of 2010/PLAC 70/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN:

M. Venkataramana, (EC.No.4049137), S/o Suryanarayana, aged about 40 years,

Ex-Coal filler at PK-1 Incline,

Singareni Collieries Company Limited,

Manuguru Area, Manuguru, Khammam District
Petitioner

And

1. The Singareni Collieries Company Ltd., Kothagudem, Khammam District rep. by its Director (PA & W).
2. The Chief General Manager, Singareni Collieries Company Ltd., Manuguru Area, Manuguru, Khammam District.

.... Respondents

This case is coming up before the Lok Adalat on 29-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri S.M. Subhani on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afreshon Coal filling, wherever coal filling is available and need not be the same place where the workmen was last employed.
- c. The petitioner workman agrees for observatiobn of one year with minimum mandatory 20 musters every month and review every three months on coal filing only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filer afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. illegible Sd/. illegible

Signature of Applicant(s) Signature of Respondent (s)

Sd/. illegible Sd/. illegible

Signature of Counsel for Signature of Counsel for
Applicant (s) Respondent (s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, 2. C. Niranjan Rao

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 859.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 02/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 859.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/02/2010)* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOKADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services

Authorities Act, 1987) 29th day of December Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur
Presiding Officer.

2. Sri C. Niranjan Rao
Member

3. Sri Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22.8.2006)

In the matter of case No. LCID No. 2 of 2010/PLAC 67/2011 (On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN:

M. Ravinder Reddy.
Sco. Raji Reddy.

....Petitioner

AND

The Management of Sec Ballapolly. **Respondents**

This case is coming up before the Lok Adalat on 29-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri Gividya Singh and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling, wherever coal filling is available and need not be the same place where the workmen was last employed.

- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every months and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filer afresh wherever coal filling is available.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. illegible Sd/. illegible

Signature of Applicant(s) Signature of Respondent (s)

Sd/. illegible Sd/. illegible

Signature of Counsel for Applicant (s) Signature of Counsel for Respondent (s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, 2. C. Niranjan Rao,
Chairman Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 860.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, हैदराबाद के पंचाट (एलसीआईडी संख्या 09/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02. 2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O.. 860.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central

Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/09/2010)** as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on **06.02.2012**.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOKADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987) the 29th day of December Two thousand and Eleven

PRESENT:

- 1. Sri Ved Prakash Gaur
Presiding Officer.
- 2. Sri C. Niranjan Rao
Member
- 3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22.8.2006)

In the matter of case No. LCID No. 9 of 2010/PLAC 68/2011 (On the file of CGIT cum-Labour Court at Hyderabad)

BETWEEN

Banoth Sakru, (EC. No. 0299170), S/o Banoth Balu, aged about 35 years,

Ex. General Mazdoor at GKCP,
Singareni Collieries Company Ltd.,
Kothagudem Area, Kothagudem,
Khammam District

....PETITIONER

AND

- 1. The Singareni Collieries Company Limited,
rep. by its Chief General Manager,
Kothagudem Area, Kothagudem, Khammam District
- 2. The Superintendent of Mines,
Singareni Collieries Company Limited,
GKOP, KGM (Area), Kothagudem,
Khammam Dist.RESPONDENTS

This case is coming up before the Lok Adalat on 29-12-2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. SARMA

on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same:

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every months and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. illegible	Sd/. illegible
Signature of Applicant(s)	Signature of Respondent (s)
Sd/. illegible	Sd/. illegible
Signature of Counsel for	Signature of Counsel for
Applicant (s)	Respondent (s)
Signature of Presiding Officer & Members of the Bench	
1. Ved Prakash Gaur,	2. C. Niranjan Rao,
Chairman	Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 861.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (एलसीआईडी संख्या 18/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02. 2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डॉ एस० एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O.. 861.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/18/2010)** as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **SCCL** and their workmen, which was received by the Central Government on **06.02.2012**.

[No. L-22013/1/2012-IR(C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

IN THE LOK SABHA

(For settlement of cases relating to CGIT cum-Labour Court at Hyderabad Under Section 20 of the Legal services Authorities Act, 1987) the 29th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur
Presiding Officer
2. Sri C. Niranjan Rao
Member
3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLAS Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID 18 of 2010/PLAC 69/2011 (On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN

S.K.Jamal, (EC No. 4055057), S/o S.K. Abbas Ali, aged about 37 years, Ex-General Mazdoor at PK-1 incline, Singareni Collieries Company Limited, Manuguru Area, Manuguru, Khammam District

PETITIONER

AND

1. The Singareni Collieries Company Limited, Kothagudem, Khammam District rep. by its Director (PA & W).
 2. The Chief General Manager, Singareni Collieries Company Limited, Manuguru Area, Manuguru, Khammam District.
- Respondents**

This case is coming up before the Lok Adalat on 29.12.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri S.M. Subhani on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same:

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Filler afresh on
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. illegible	Sd/. illegible
Signature of Applicant(s)	Signature of Respondent (s)
Sd/. illegible	Sd/. illegible
Signature of Counsel for Applicant (s)	Signature of Counsel for Respondent (s)
Signature of Presiding Officer & Members of the Bench	

1. Ved Prakash Gaur
2. Niranjan Rao

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA, ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का०आ० 862.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० सी० एल० के प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, हैदराबाद के पंचाट (एलसीआईडी संख्या 93/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[सं० एल-22013/1/2012-आई आर (सी-II)]
डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 862.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/93/2009)** as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of **SCCL** and their workmen, which was received by the Central Government on 06.02.2012.

[No. L-22013/1/2012-IR (C-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE**IN THE LOKADALAT**

(For settlement of cases relating to CGIT cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987) the 16th day of December, Two thousand and Eleven

PRESENT:

1. Sri Ved Prakash Gaur
Presiding Officer
2. Sri C. Niranjan Rao
Member
3. Sri : Member

(Constituted U/s 19 of the LSA Act, 1987 by the
APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID 93/2009/PLAC62/2011

(On the file of CGIT cum Labour Court at Hyderabad)

BETWEEN

Narkka Sloven
S/o Rajan Orc Coolkillen
R/o 10-121, Blupalpaly
Wenyal Distt.

... Petitioner

AND

The General Manager,
SCCC Blupallpaly Area, Wenyal Distt. **Respondent**

This case is coming up before the Lok Adalat on 16.12.2011 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Shri S.M. Subhani on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
 - b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling, wherever coal filling is available and need not be the same place where the workmen was last employed.
 - c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
 - d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.

- e. All other usual terms and conditions of appointment will be applicable *i.e.*, transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filler afresh whenever Coal Pillingisavailable

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. illegible Sd/. illegible

Signature of Applicant (s) Signature of Respondent (s)

Sd/. illegible Sd/. illegible
Signature of Counsel for Signature of Counsel for
Applicant (s) Respondent (s)

Signature of Presiding Officer & Members of the Bench

1. Ved Prakash Gaur, 2. C. Niranjan Rao,
Chairman Member

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA, ACT 1987.

नई दिल्ली, 6 फरवरी, 2012

का० 863.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 373/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हआ था।

[फां सं एल-22012/378/2000-आई आर (बी-I)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 863.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 373/200 of the **Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar** as shown in the Annexure in the industrial dispute between the management of **State Bank of India** and their workmen, which was received by the Central Government on **06.02.2012**.

[F.No.L-22012/378/2000-IR (B-I)]
RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT BHUBANESWAR

PRESENT:

Shri J. Srivastava,
 Presiding Officer, C.G.I.T.-cum-Labour
 Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO.373/2001

Date of Passing Award-29th December, 2011

BETWEEN:

The Assistant General Manager,
 State Bank of India, Main Branch, Bhubaneswar,
 Orissa-751 009.
 ... 1st Party-Management

AND

Their workman Shri Sudarsan Sahoo.
 Represented through the General Secretary,
 State Bank of India Employees Union,
 C/o. State Bank of India, Zonal Office,
 Bhubaneswar, Orissa-751 009.
 ... 2nd Party-Union

APPEARANCES:

For the 1st Party- Management.	M/s. H.K. Mohanty, Advocate
For the 2nd Party- Union.	M/s. B.C. Bastia & Associates, Advocate.

AWARD

The Government of India in the Ministry of Labour has referred an Industrial Dispute existing between the employees in relation to the management of State Bank of India, Bhubaneswar and their workman in exercise of the powers conferred by clause (d) of sub-section (1) of sub-section (2-A) of Section 10 of the Industrial Dispute Act *vide* their letter No. 12012/378/2000-IR (B-I), dated 30.1.2011.

2. The dispute as mentioned in the schedule of the letter of reference is given below.

Whether the action of the Management *i.e.* State Bank of India, by not regularizing the service of Shri Sudarsan Sahoo is justified? If not, what relief the workman is entitled to?

3. The 2nd Party workman in pursuance of the letter of reference has filed his statement of claim in which he has stated that he joined his service as canteen boy in the State Bank of India canteen at Bhubaneswar Main Branch on 15.12.1981. From the above date till August, 1991 he

worked temporarily with interruption and thereafter from August, 1991 till date he has been working continuously in permanent vacancy. He has rendered his service most sincerely and diligently and there is no adverse remark in his service career till the year 1991-92. He was paid his salary like other regular employees but thereafter his salary was reduced to minimum wages of Rs. 25/- and Rs. 40/- per day. The management of State Bank of India runs the canteen for welfare of its employees. Infrastructure facilities such as canteen building, furnitures, utensils, supply of electricity and water are provided by the management. The canteen runs on no profit and no loss basis and the employees of the Banks are the sole beneficiaries of the canteen facility. The canteen is functioning under the direct control and supervision of the 1st Party-Management and the staff including the 2nd Party-workman are paid their wages by the Management. Therefore relationship of master and servant exists between the 1st Party-Management and the 2nd Party-workman. The day-to-day affairs of the canteen are looked after by the canteen committee constituted of members amongst the employees of the Bank. There has been numerous settlements/agreements between the Bank-Management and All India State Bank of India Staff Federation on various service matters including regularization of casual/temporary workers in sub-staff category. One of such settlements was made on 19th October, 1966 between certain Banking Companies and their employees, which *inter alia* provided for regularization of temporary employees against permanent vacancies. Another settlement was made in the year 1992, which apart from other things provided for taking over of the staff canteen by the Bank and absorption of temporary canteen staff permanently and in the said settlement it has been provided that only those canteen staffs will be considered for permanent appointment who were engaged by the Local Implementation Committee on regular basis as on 9.6.1989. But since the 2nd Party-workman has been working prior to the said date, his case stands in a better footing than those who were appointed thereafter. The 2nd Party-workman in response to an advertisement for regular absorption applied for the same fulfilling all the eligibility criteria but his case for regularization was not considered by the Management while some of his juniors have been given regular appointment. Every now and then he is facing a threat of removal from service by the Management because of his temporary status. He filed a writ petition before the Hon'ble High Court of Orissa wherein the 2nd Party-workman was directed to seek alternative remedy under the proper Forum/Authority for justice. Accordingly he raised the present dispute through Union and the relief has been sought for from the 1st Party-Management to regularize the service of the 2nd Party-workman from the date his juniors have been regularized and to pay equal pay and other service benefits from the date of regularization.

4. The 1st Party-Management filed written statement and stated that in order to absorb temporary employees in permanent vacancies the Management of State Bank of India and the State Bank of India Staff Federation entered into various agreements. A bipartite settlement was entered into and was circulated amongst employees and an opportunity was afforded to them to appear in an interview. The present workman was also called for in interview, but he could not secure better position. On the basis of interview two separate panels were prepared which remained valid up to 31.3.1997 and thereafter they expired and now no-one has right or claim for regularization on the expiry of the said panels. Being aggrieved with the decision of the Bank the present workman filed a Writ Petition which was dismissed by the Hon'ble High Court of Orissa on 15.5.1998 along with a batch of similar Writ Petitions. One of the employees named Shri Natabar Das had filed S.L.P. before the Hon'ble Supreme Court which too was dismissed on merits *vide* order dated 16.7.1999. Therefore after the judgment of the Apex Court the reference in question for regularization of services of the employee is not open for further adjudication. The workman had obtained an interim order from the Hon'ble High Court of Orissa and was continuing in service with the strength of the said order till the disposal of the Writ Application on 15.5.1998 and subsequently he had raised an industrial dispute for regularization of his services and continuing as such due to pendency of such proceedings, despite the fact that he has no locus-standi to continue after the expiry of the panel as well as the verdict of the Hon'ble High Court of Orissa and Hon'ble Supreme Court of India. The present workman was working temporarily on daily basis. As such he knew very well that his services would come to an end at any time, if he has not been regularized as per norms of the Bank. It is not a fact that any junior was appointed without due process of selection. It is submitted that the canteen is maintained out of subsidies meant for welfare of the staff and the day to day affair of the canteen is managed by the canteen committee consisting of several members of the Bank and are supervised by a canteen Manager. It is not correct to say that there exists master and servant relationship between the Management and the 2nd Party-workman. The functioning of the canteen is not associated with the main function of the Bank. It is not correct to say that the 2nd Party-workman was working under the Local Implementation Committee prior to taking over of the canteen. Therefore none of the prayers made in the statement of claim is tenable in the eye of law.

5. On the above pleadings following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the 2nd Party-workman is eligible for regularization in the post?

3. Whether the action of State Bank of India ia not regularizing the service of the workman is legal and justified?

4. If not, to what relief the workman is entitled?

6. The 2nd Party-workman Shri Sudarsan Sahoo has adduced his evidence through affidavit and was cross examined on 2.5.2006. He proved four documents marked as Ext.-1 to 4.

7. The 1st Party-Management has examined two witnesses on affidavit namely Shri Sadasiba Tripathi as M.W.-1 and Shri Abhaya Kumar Das M.W.-2 and proved eight documents marked as Ext.-A to Ext.-H.

FINDINGS

ISSUE NO.1

8. This issue relates to the maintainability of the reference. But on perusal of the written statement it is found that the 1st Party-Management has not challenged the maintainability of the reference, instead has only stated that the statement of claim as laid and framed is not maintainable in the eye of law. This allegation does not root out the maintainability of the reference.

Further it has been stated that the matter of regularization having been adjudicated upto the Apex Court cannot be re-adjudicated and is not open to further adjudication. But here it is to be pointed out that the matter in issue before the Hon'ble High Court of Orissa was to give the petitioners appointment by filling up the vacancies against the sanctioned posts of messenger and the Hon'ble High Court directed the petitioners, if they feel aggrieved about the norms formulated to challenge the same before the appropriate forum/authority. But at the same time the Hon'ble High Court did not accede to the prayer of the petitioners for giving them appointment against the vacant sanctioned posts. Therefore it cannot be said that the reference is not maintainable before this Tribunal/Court. Having regard to the facts of the case I am of the view that the reference is quite maintainable in this Tribunal/Court under the provisions of the Industrial Disputes Act, 1947 so referred by the Government of India. This issue is thus decided against the 1st Party-Management.

ISSUE NO.2

9. The 2nd Party-workman has stated that he joined his service as canteen boy in the State Bank of India Canteen at Bhubaneswar Main Branch on 15.12.1981 and worked there till August, 1991 intermittently. After August, 1991 he has been working continuously till date in permanent vacancy. Thus after rendering more than 10 years unblemished continuous service he was not regularized, though some of his juniors were regularized. He is still having temporary status. The canteen is functioning under the direct control and supervision of the 1st Party-

Management and the staffs including the 2nd Party-workman are paid their wages by the Management. As such there exists master and servant relationship between the 1st Party-Management and the 2nd Party-workman. As per agreement made between certain Banking companies and their employees on 19th October, 1966 provision for regularization of temporary employees against permanent vacancies was made. Another settlement between the State Bank of India and All India State Bank of India Employees Federation was made in the year 1992 which provided for taking over of staff canteen by the Bank and absorption of temporary canteen staff permanently. Accordingly applications were invited from existing temporary employees for their regular absorption. The 2nd Party-workman although fulfilled all the eligibility criteria, but his case for regularization was not considered by the 1st Party-Management. Therefore he filed a Writ Petition before the hon'ble High Court of Orissa in which the workman was directed to seek alternative remedy before the appropriate Forum Authority for justice.

10. The 1st Party-Management has stated in reply that in order to absorb temporary employees working intermittently the management of State Bank of India and the State Bank of India Staff Federation entered into an agreement/settlement, which provided criteria for consideration of eligible temporary employees for permanent appointment in the Bank. In pursuance of the settlement all eligible temporary employees were offered opportunities for permanent appointment and were called for interview in the year 1990 and 1993. The 2nd Party-workman was also called for in the interview, but he could not secure a better position. The panels of temporary employees prepared on the basis of interview also expired on 31.3.1997 and after that the 2nd Party-workman or any other employee has no right to claim regularization or absorption in permanent post. The 2nd Party-workman also filed O.J.C. No. 4926/1997 in the Hon'ble High Court of Orissa but that Writ Application was dismissed by a common judgment delivered in O.J.C. No. 2787/97. One Natarbar Das filed S.L.P. before the Hon'ble Supreme Court but that too was dismissed on merits. The Hon'ble High Court of Orissa in its judgment has upheld the action taken by the management of the State Bank of India and did not grant any relief to the petitioners regarding appointment against the sanctioned post of messengers.

11. It has been denied by the 1st Party-Management that no juniors were appointed in derogation with the scheme of appointment. As such it cannot be said that the 2nd Party-workman is eligible for regularization in the post particularly when he did not qualify in the interview for absorption or appointment in permanent post as per settlements arrived at between the management of the State Bank of India and All India State Bank of India Staff Federation, which are binding upon the parties concerned or the beneficiaries being members of the participating Union.

12. Moreover the services of the 2nd Party-workman were intermittent and temporary in nature. Ext.-1 filed by the 2nd Party-workman shows that from January, 1982 to 18.12.1987 he had worked only for 200 days as a messenger. Ext.-2 is a recommendatory letter of the Dy. General Manager for consideration of the name of the 2nd Party-workman for his absorption in permanent post. This letter shows that the 2nd Party-workman has been consistently working as a canteen boy in the Bank run canteen from 15.8.1991, but that does not mean that he has acquired a right of being absorbed in permanent post. The Hon'ble Supreme Court in the case of "Secretary State of Karnataka and others—*Versus*-Uma Devi and others" reported in AIR 2006 SC 1806 has held that:—

Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contact. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment do not acquire any right.

13. The judgment given by the Hon'ble High Court of Orissa in O.J.C. No. 2787/97 and other analogous cases reported in "86 (1998) C.L.T. 834" (Abhimanyu Mandal & Others—*Versus*-State Bank of India & Others) is binding on all the petitioners including the present workman. In these cases regularization of temporary employees/daily wagers/casual employees was prayed and all the cases with the prayer were dismissed by the Hon'ble High Court of Orissa and the S.L.P. filed against that judgment in the Hon'ble Supreme Court by one Natabar Das was also dismissed. The judgment is binding not only on the parties of the case, but also on all courts subordinate to or lower in rank to it. Therefore, the matter of regularization is not now open to be adjudicated upon in this Tribunal/Court as the same has been settled for all and it is held that the 2nd Party-workman is not eligible for permanent absorption or regularization in the post. This issue is decided in the negative and against the 2nd Party-workman.

ISSUE NO. III

14. For the foregoing discussions made in Issue No. II the action of the State Bank of India is not regularizing the services of the workman cannot be held illegal and unjustified. Since the disputant-workman had availed of the opportunity of appearing in the interview for permanent appointment and he had not come out successful to be placed on the existing vacancy and the wait listed panel had expired on 31.3.1997, there remains no course open for regularization in view of the bipartite agreement/settlement entered into between the Management of State Bank of India and the State Bank of India Staff Federation. This issue is answered accordingly.

ISSUE NO. IV

15. In view off the aforesaid discussions and conclusions arrived at the 2nd Party-workman is not entitled to any relief claimed for.

16. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer
नई दिल्ली, 6 फरवरी, 2012

का०आ० 864.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 21/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 06-02-2012 को प्राप्त हुआ था।

[फा०सं० एल-12012/191/2007-आई आर (बी-१)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 864.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2008) of the *Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar* as shown in the Annexure, in the Industrial dispute between the management of *State Bank of India*, and their workmen, received by the Central Government on 06/02/2012

[FNo.-L-12012/191/2007-IR(B-I)]
RAMESH SINGH, Desk Officer
ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

PRESENT:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 21/2008
Date of Passing Award—20th January, 2012

BETWEEN:

The Assistant General Manager,
State Bank of India, Bhubaneswar
Main Branch, Bhubaneswar,
Dist. Khurda (Orissa), Bhubaneswar. (Orissa)
... 1st Party—Management.

AND

Their Workman Sri Tukuna Moharana,
Qrs. No. VR-5/1, Kharvela Nagar, Unit-III,
Bhubaneswar. (Orissa)
... 2nd Party—Workman.

APPEARANCES:

Shri Alok Das, For the 1st Party—
Management.

Authorized Representatives

None. ... For the 2nd Party Workman.

AWARD

An industrial dispute existing between the employers in relation to the management of State Bank of India and their workman has been referred to this Tribunal/Court by the Government of India in the Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* their letter No. L-12012/191/2007-IR (B-I), dated 14.05.2008 to the following effect:

“Whether the action of the management of State Bank of India, in relation to their main branch, Bhubaneswar in terminating the services of Sri Tukuna Maharan, *w.e.f.* 30.9.2004 without complying the provisions of I.D. Act, 1947, is legal and justified? If not, what relief the workman concerned is entitled to?”

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on temporary/casual/daily wage basis on 23.5.1988 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was terminated and refused employment from 30.9.2004 by the 1st Party—Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He was also not given regular appointment while in service. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) *vide* his letter dated 21.2.2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the

Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party—Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party—Workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party—Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party—workman is appearing at Sl. No. 36 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he was discontinued from service on 30.9.2004 and was signing bogus vouchers is not correct. As per his own admission his services were discontinued from November, 1990 and he was receiving payment in his own name. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. It is denied that he had joined the Bank on 23.5.1988 and was performing the duty, which is regular and perennial in nature. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party—Workman has never completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and Management of the State Bank of India all eligible persons were called for interview. The 2nd Party—Workman was called for an interview along with all other eligible persons in the years 1990 and 1993. But he could not succeed in the interviews. As such he could not be absorbed in the Bank's service. The Union or the 2nd Party—Workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997 filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch

of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Shri Maharana were terminated much prior to the expiry of the panel, his claim has become stale by raising the dispute after lapse of a period of 15 years. It is a settled principle of law that delay destroys the right to remedy. Thus raising the present dispute after 15 years of alleged termination is liable to be rejected.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for more than 240 days as enumerated under section 25-F of the Industrial Disputes Act?

3. Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Tukuna Moharana with effect from 30.9.2004 without complying the provisions of the I.D. Act, 1947 is legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-Workman despite giving sufficient opportunity did not produce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Krupasindhu Nayak as M.W. - 1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-Workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-Workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Cast No. 7/2007 is given below for comparison with the dispute in the present case—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen is entitled to?

8. The name of the 2nd Party-Workman appears at Sl. No. 36 in Annexure-A to the above reference. In both the

cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-Workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

Issue No. 2

9. The onus to prove that the 2nd Party-Workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-Workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he was appointed on 23.5.1988 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-Workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Krupasindhu Nayak in his statement before the Court has stated that "the disputant was working intermittently for few days in our branch on daily wage basis in exigencies He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued with effect from 30.9.2004, but stated that "In-fact the workman left the branch from working since January, 1989". Thus he had not worked after January, 1989. The 2nd Party-Workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination as per provisions of Section 25-B of the Industrial Disputes Act, 1947. Therefore, it cannot be said that the services of the 2nd Party-Workman were terminated

without complying the provisions of the Industrial Disputes Act, 1947. This issue is thus decided against the 2nd Party-Workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

Issue No. 3

10. Since the 2nd Party-Workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-Workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-Workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Tukuna Moharana with effect from the alleged date of his termination is fair, legal and justified and cannot be said to be in contravention of the provisions of the Industrial Disputes Act, 1947. This issue is accordingly decided in the affirmative and against the 2nd Party-Workman.

Issue No. 4

11. In view of the findings recorded above under Issue No. 2 and 3 the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का०आ० 865.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर टेलीकाम, डिपार्टमेंट, गांधी भवन, लखनऊ के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 157/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/2/2012 को प्राप्त हुआ था।

[फाइल सं० एल-40012/78/2001-आई आर (डी यू)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 865.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (**Ref. No. 157/2001**) of the Central Government Industrial Tribunal cum Labour Court **Lucknow** as shown in the Annexure in the Industrial dispute between **the employers in relation to the Manager Telecom Deptt. Gandhi Bhawan Lucknow, The Telecom Distt. Engineer, Raebareli and their workman**, which was received by the Central Government on **06.02.2012**.

[File No. L-40012/78/2001-IR (DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT LUCKNOW

PRESENT:

DR. MANJU NIGAM
PRESIDING OFFICER
I.D. No. 157/2001
Ref. No. L-40012/78/2001-IR(DU) dated: 11.09.2001

BETWEEN

Shri Shyam Lal S/o Sh. Rameshwar
R/o Vill. Govindpur (Madhow)
PO Bishundaspur
Distt.-Raebareli

AND

1. The General Manager
Telecom Deptt.
O/o General Manager
Gandhi Bhawan
Lucknow (U.P.)-226001
2. The Telecom District Engineer
O/o the Telecom District Manager
Raebareli (Distt.)_229 001.

AWARD

1. By order No. L-40012/78/2001-IR(DU) dated: 11.09.2001 and its subsequent corrigendum dated 27.12.2001, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Shyam Lal S/o Sh. Rameshwar, R/o Vill. Govindpur (Madhow), PO Bishundaspur Distt. Raebareli and the General Manager, Telecom Deptt. O/o General Manager, Gandhi Bhawan, Lucknow (U.P.) and the Telecom District Engineer, O/o the Telecom District Manager, Raebareli (Distt.) for adjudication.

2. The reference under adjudication is:

"Whether The Action of The Management of Telecom, Lucknow in Terminating The Services of Sh. Shyam Lal Vide Order Dated 14/9/99 was Legal And Justified? If Not, What Relief the Workman is Entitled to?"

3. The case of the workman, Shyam Lal, in brief, is

that he was employed under Divisional Engineer, Telecom, Raibareli on the post of security personnel on 06.02.1999 without any appointment letter and worked as such till 14.09.1999 when his services has been terminated without any notice or retrenchment compensation in violation to the provisions contained in Section 25 F of the Industrial Disputes Act, 1947 in spite of the fact he worked for about 240 days. It is submitted by the workman that during his service period he put his attendance on the attendance register and was paid on Muster Roll sheet and also that he was never given any proof regarding salary. It has been alleged by the workman that the management retained workmen junior to him and has employed some other new persons also, in violation to the provisions contained in Section 25 G & H of the Act. Accordingly, the workman has prayed that his termination order be set aside and he be reinstated with consequential benefits including back wages.

4. The opposite party has filed its written statement, denying the claim of the workman; wherein it has submitted that the workman was never engaged by it, as such, there arises no question of termination or violation of any of the provisions of I.d. Act. moreover, it has been submitted that the workman was the employee of M/s Security and Protection Services, Varanasi and the workman never received any payment towards salary from the department directly; rather the management, as per terms of the contract, had always paid for the watch and ward services rendered by M/s. Security and Protection Services, Varanasi and no point of time any payment was ever made to the workman by the management in lieu of his any services. The management has specifically submitted that the workman was admittedly deployed by M/s Security and Protection Services, Varanasi as one of its severral watchman, which did not create any lien in favour of the workman against the management, furthermore, the contract between the management and M/s Security and Protection Services, Varanasi came to an end on 05.03.99 Accordingly, the management has prayed that the claim of the workman be rejected without any relief to him.

5. The workman has filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim.

6. The workman has not field any documentary evidence in support of his claim whereas the management filed copy of letter of M/s Security and Protection Services, Varanasni and copy of contract between the management and M/s Security and protection Services, Varanasi.

7. After conclusion of workman's evidence the management was afforded opportunity for its evidence on 29.08.2003; but when none turned up from the management, the case was ordered to proceed ex-parte against the management and next date 25.09.2003 was fixed for ex-parte hearing. On 25.09.2003, the management moved application to recall the ex-parte order dated 25.09.2003 and the same was recalled *vide* order dated 05.08.2004 and the management was directed to adduce its evidence. The opportunity to lead evidence was closed *vide* order dated

16.06.2006 and next date 11.07.2006 was fixed for arguments. The management was once again given opportunity to lead its evidence *vide* order dated 16.1.2007 but it again failed to adduce any. This time again the management shown its reluctance and next date 05.10.2007 was fixed for arguments. Thereafter, as many as thirty dates were fixed in time span of four years but the parties did not bother to forward any argument. This is evident from the fact that the authorized representative of the workman put up his appearance on as many as six dates (absent for last seven dates) and the authorized representative for management was present for just one time. Accordingly, looking into the reluctance of the parties to contest the case and long pendency of the case, the file was reserved for award.

8. It was the case of the workman that he has been employed as security personnel on 06.02.1999 and worked as such till 14.09.1999 when his services have been terminated without any notice or retrenchment compensation in violation to the provisions contained in Section 25 F of the Industrial Disputes Act, 1947 in spite of the fact he worked for 240 days in a year. Also he has neither been given any appointment nor any termination letter and that he put his attendance on the attendance register and was paid on Muster Roll Sheet and also that he was never given any proof regarding salary. The workman has neither filed any documentary proof nor has summoned any to substantiate his version.

9. per contra, the management of the telecom has disputed the claim of the workman and has submitted that the workman was the employee of M/s Security and Protection Services, Varanasi and as per terms of the contract, had always paid for the watch and ward services rendered by M/s Security and Protection Services, Varanasi and in no point of time any payment was made to the workman by the management in lieu of his any services. The contract between management and M/s Security and Protection Services, Varanasi expired on 05.03.1999. The management has filed photocopy of as many as two documents to support its version; but has not entered the witness box to adduce any oral evidence.

10. I have scanned entire, evidence on record.

11. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced by the party invoking jurisdiction of the court, the claim must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer vs S.T. Handimani Hon'ble Apex Court has observed as under:

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court

or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

12. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellati & Asstt. Executive Engineer as follow:

"it is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

13. In the present case the workman has stated that he has worked for about 250 days in 08 months and that he put his attendance on Muster Roll and was paid @ Rs. 46/- per day, which was enhanced to Rs. 50/-, on the basis of Muster Roll; but has not produced any original documents in support of his oral evidence either photocopy or original in support of his averments. He has also not made any effort to get any of the documents summoned from the management. The initial burden of establishing the fact of continuous working for 240 days in a year preceding the date of alleged termination was on the workman but he has failed to discharge the above burden. Mere pleadings are no substitute for proof. There is no reliable material for recording findings that the workman had actually worked for 240 days in the preceding twelve months from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

Accordingly, the reference is adjudicated against the workman Shyam Lal and I come to the conclusion that he is not entitled to any relief.

15. Award as above.

LUCKNOW.
30.12.2011

DR. MANJU NIGAM,
Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का.आ. 866.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिपार्टमेंट, गांधी भवन, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 156/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2012 को प्राप्त हुआ था।

[सं. एल-40012/75/2001-आई आर (डीयू)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S. O. 866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 156/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to the The Manager Telecom Deptt. Ghandhi Bhawan, Lucknow, The Telecom Distt. Engineer, Raibareli, and their workman, which was received by the Central Government on 6-2-2012.

[No. L-40012/75/2001-IR (DU)]

RAMESH SINGH, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
LUCKNOW
PRESENT
Dr. MANJU NIGAM,
PRESIDING OFFICER
I.D. No. 156/2001**

Ref. No. L-40012175/2001-IR(DU) dated: 11-9-2001

BETWEEN

Shri Awadesh S/o Sh. Thakurden
R/o Vill. Takerai (Jagatpur)
Thana Kotwali (Slon)
Raibareli

AND

1. The General Manager
Telecom Deptt.,
O/o General Manager,
Gandhi Bhawan,
Lucknow (U.P.) - 226001
2. The Telecom District Engineer
O/o the Telecom District Manager
Raibareli (Distt.) - 229001.

AWARD

1. By order No. L-40012/75/2001-IR(DU) dated 11-9-2001 and its subsequent corrigendum dated 27-12-2001, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the

Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Awadesh S/o Sh. Thakurden, R/o Vill. Takerai (Jagatpur), Thana. Kotwali (Slon), Raibareli and the General Manager, Telecom Deptt., O/o General Manager, Gandhi Bhawan, Lucknow (U.P.) and the Telecom District Engineer, O/o the Telecom District Manager, Raibareli (Distt.) for adjudication.

2. The reference under adjudication is:

“Whether the action of the management of Telecom, Lucknow in Terminating the services of Sh. Awadesh vide Order dated 14-2-1999 was legal and Justified? if not, what relief the workman is entitled to ?”

3. The case of the workman, Awadesh, in brief, is that he was employed under Divisional Engineer, Telecom, Raibareli on the post of security personnel on 5-2-1999 without any appointment letter and worked as such till 14-9-1999 when his services has been terminated without any notice or retrenchment compensation in violation to the provisions contained in Section 25 F of the Industrial Disputes Act, 1947 in spite of the fact he worked for more than 240 days including 52 weekly and 15 national holidays. It is submitted by the workman that during his service period he put his attendance on the attendance register and was paid on Muster Roll sheet and also that he was never given any proof regarding salary. It has been alleged by the workman that the management retained workmen junior to him and has employed some other new persons also, in violation to the provisions contained in Section 25 G & H of the Act. Accordingly, the workman has prayed that his termination order be set aside and he be reinstated with consequential benefits including back wages.

4. The opposite party has filed its written statement, denying the claim of the workman; wherein it has submitted that the workman was never engaged by it, as such, there arises no question of termination or violation of any of the provisions of I.D. Act. Moreover, it has been submitted that the workman was the employee of M/s. Security and Protection Services, Varanasi and the workman never received any payment towards salary from the department directly; rather the management, as per terms of the contract, had always paid for the watch and ward services rendered by M/s. Security and Protection Services, Varanasi and in no point of time any payment was ever made to the workman by the management in lieu of his any services. The management has specifically submitted that the workman was admittedly deployed by M/s. Security and Protection Services, Varanasi as one of its several watchman, which did not create any lien in favour of the workman against the management, furthermore, the contract between the management and M/s. Security and Protection Services, Varanasi came to an end on 5-3-99. Accordingly, the management has prayed that the claim of the workman be rejected without any relief to him.

5. The workman has filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim.

6. The workman has not filed any documentary evidence in support of his claim whereras the management filed copy of letter of M/s. Security and Protection Services, Varanasi and copy of contract between the management and M/s. Security and Protection Services, Varanasi.

7. After conclusion of workman's evidence the management was afforded opportunity for its evidence on 29-8-2003; but when none turned up from the management, the case was ordered to proceed ex-parte against the management and next date 25-9-2003 was fixed for ex-parte hearing. On 25-9-2003, the management moved application to recall the ex-parte order dated 25-9-2003 and the same was recalled vide order dated 5-8-2004 and the management was directed to adduce its evidence. The opportunity to lead evidence was closed vide order dated 1-11-2006 and next date 21-12-2006 was fixed for arguments. When none turned up on behalf of the opposite party for arguments, order to proceed ex-parte against the management was passed vide dated 16-2-2009 and next date 4-3-2009 was fixed for ex-parte arguments from workman side. Since 4-3-2009, about three years' time has been passed but the parties have not forwarded any argument in support of their case. The reluctance of the parties is evident from the fact that the authorized representative of the workman has not turned up for the last eight dates; whereas the management's representative has appeared only once. Accordingly, looking into the reluctance of the parties to contest the case and long pendency of the case, the file was reserved for award.

8. I have perused entire, evidence on record and gone through the evidence.

9. It was the case of the workman that he has been employed as security personnel on 6-2-1999 and worked as such till 14-9-1999 when his services has been terminated without any notice or retrenchment compensation in violation to the provisions contained in Section 25F of the Industrial Disputes Act, 1947 in spite of the fact he worked for 240 days in a year. Also, he has neither been given any appointment nor any termination letter and that he put his attendance on the attendance register and was paid on Muster Roll Sheet and also that he was never given any proof regarding salary. The workman has neither filed any documentary proof nor has summoned any to substantiate his version.

10. Per contra, the management of the telecom has disputed the claim of the workman and has submitted that the workman was the employee of M/s. Security and Protection Services, Varanasi and as per terms of the contract, had always paid for the watch and ward services rendered by M/s. Security and Protection Services, Varanasi

and in no point of time any payment was ever made to the workman by the management in lieu of his any services. The contract between management and M/s. Security and Protection Services, Varanasi expired on 5-3-1999. The management has filed photocopy of as many as two documents to support its version; but has not entered the witness box to adduce any oral evidence.

11. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced by the party invoking jurisdiction of the court, the claim must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. . In (2002) 3 SCC 25 Range Forest Officer vs S.T. Hadimani Hon'ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.

12. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow :

“It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal

muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will no suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

13. In the present case the workman has stated that he has worked continuously since 6-2-1999 to 14-9-1999; but has not produced any original documents in support of his oral evidence either photocopy or original in support of his averments. He has also not made any effort to get any of the documents summoned from the management. The initial burden of establishing the fact of continuous working for 240 days in a year preceding the date of alleged termination was on the workman but he has failed to discharge the above burden. Mere pleadings are no substitute for proof. There is no reliable material for recording findings that the workman had actually worked for 240 days in the preceding twelve months from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

14. Accordingly, the reference is adjudicated against the workman Awadesh; and I come to the conclusion that he is not entitled to any relief.

15. Award as above.

LUCKNOW

3-1-2012

DR. MANJU NIGAM, Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का.आ. 867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर इण्डिया सिक्योरिटी प्रेस, करेंसी नोट, प्रेस, नासिक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या सी.जी.आई.टी.-2/99 ऑफ 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-2012 को प्राप्त हुआ था।

[सं. एल-16011/7/2005-आई.आर (डीयू)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th February, 2012

S.O. 867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT-2/99 of 2005**) of the Central Government Industrial Tribunal cum Labour Court No. 2 Mumbai as shown in the Annexure, in the Industrial dispute between **the employers in relation to The General Manager India Security Press, Currency Note Press Nasik and their workmen**, which was received by the Central Government on 06.02.2012.

[F.No. L-16011/7/2005-IR(DU)]

Ramesh Singh, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

NO.2, MUMBAI

PRESENT

K.B. KATAKE

Presiding Officer

REFERENCE NO. CGIT-2/99 OF 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) INDIA SECURITY PRESS

The General Manager

India Security Press

Nashik

Nashik Road (MS)-422 101

(2) CURRENCY NOTE PRESS

The General Manager

Currency Note Press

Nashik Road

Nashik (MS)-422 101.

AND

THEIR WORKMEN

(1) The General Secretary

ISP/CNP Class IV Employees' Union & Ors.

Near India Security Press
Green Gate, Nasik Road
Nasik (MS)-422 101.
(2) The General Secretary
ISP Mazdoor Sangh
Near India Security Press
Green Gate, Nasik Road
Nasik (MS)-422 101.
(3) The General Secretary
ISP/CNP Staff Union
Near India Security Press
Green Gate, Nasik Road
Nasik (MS)-422 101.

APPEARANCES:

FOR THE EMPLOYER Nos. 1 & 2 : Ms. Neeta Masurkar
Advocate.

FOR THE UNION Nos. 1 & 2 : Ms. Ranjana
Todankar
Advocate.

FOR THE UNION No. 3 : No appearance.
Mumbai, dated the
12th December, 2011.

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No. L-16011/7/2005-IR(DU), dated 05/08/2005 & Corrigendum dated 30/10/2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:-

"Whether the demand of the Unions for payment of Ad-hoc bonus is tenable and justified while Group Incentive Scheme for employees of the Currency Note Press, Nashik and the India Security Press, Nasik are in operation. If not, what relief the employees are entitled for?"

2. After receipt of the reference notices were issued to both the parties. They appeared through their legal representatives. The second party union filed its statement of claim at Ex-8. According to them, by its office memorandum dated 07.10.1986, the Central Government granted ad-hoc bonus to the employees not covered by

any productivity linked bonus scheme. In the year 1985-86 ad-hoc bonus equivalent to 23 days emoluments was granted to the employees, in the year 1986-87 they were paid ad-hoc bonus equivalent to 25 days emoluments, in the year 1988-89, 1989-90 they were paid ad-hoc bonus equivalent to 27 days emoluments, in the year 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 they were given ad-hoc bonus equivalent to 29 days emoluments. In the year 1995-96 to 2002-2003 i.e. for a period of 8 years they were paid ad-hoc bonus equivalent to 30 days emoluments. The ad-hoc bonus was paid to them from 1986 to 2002 at the time of Diwali Festival. It had no link with the profit.

3. During the period 1985 to 1986, ad-hoc bonus was paid by the Government to the workmen who were covered by Payment of Bonus Act 1965. However in the year 1996-97 after the implementation of V Pay Commission majority of workers were receiving wages more than Rs. 3500/- and were therefore not covered by Payment of Bonus Act 1965. In this situation from 1996-97, the Govt started paying ad-hoc bonus to all the employees irrespective of wage ceiling laid down under Payment of Bonus Act, 1965. Since 1996-97 a majority of workers are not covered by Payment of Bonus Act 1965 inspite of that they received bonus at the time of Diwali Festival at uniform rate of 30 days emoluments. They received it as a customary bonus till the year 2002-2003 and they are entitled to receive the same at the same rate as a customary bonus.

4. According to them, Govt of India by its letter dated 28.10.2004 directed that the Central Government employees are paid bonus under three schemes (a) Productivity linked Bonus Scheme, (b) Non-productivity linked Bonus Scheme and or (c) any other incentive scheme in the organisation. The Central Govt has directed that employees cannot be given benefit of two schemes. By its letter dated 3.11.2004, the Government of India has directed that bonus is not payable to those employees who are getting incentive payment. The Government has directed that ad-hoc bonus earlier paid to the employees be recovered. According to the union, the direction of the Government that the workmen who are receiving benefit of any incentive scheme are not entitled to payment of bonus and that the bonus already paid was to be recovered is illegal and arbitrary. The Group Incentive Scheme was introduced in India Security Press and Currency Note Press in the year 2001. In the CNP the Group Incentive Scheme was initially introduced in the year 1986. The Group Incentive Scheme was introduced to increase production and discourage absenteeism amongst the workers. According to the payment received by the workmen under Group Incentive Schemes do not amount to bonus and such workers who are receiving benefit under incentive scheme cannot be denied the benefit of customary bonus to which they are entitled to. Grave harm and damage will be caused to the workmen if the amount already paid to them towards bonus is recovered from them.

Therefore the second party union prays for declaration that the workmen are entitled to receive customary bonus at the rate of 30 days emoluments. The union also prays for direction to the first party to pay the bonus to the workmen under reference from the year 2003-2004 and 2004-2005 at the aforesaid rate of 30 days emoluments. They also pray to restrain the first party from recovering the amount of bonus already paid to the workmen.

5. First party No. 1 and No. 2 resisted the statement of claim *vide* their two separate identical written statements at Ex-17 & 20. According to them, the India Security Press and Currency Note Press are two independent establishments and are functioning independent of each other having two different and distinct employees and hence combined reference made against both of them is not legal and proper and cannot be tried together, thus liable to be dismissed. According to them, Govt of India owns India Security Press, Nasik Road. It was established in the year 1924. Administrative control thereof is with Department of Economic Affairs of Ministry of Finance. The General Manager, India Security Press is an officer under the control of Finance Ministry. It deals with printing of different security documents and stationery items including postal stamps, post cards, inland letters, revenue stamps, court fee stamps, passports, railway warrants, civil instruments like KVP, NSC etc. The press is engaged in carrying out sovereign functions of Govt of India. For that, press has employed different groups of employees categorised as Group-A consisting of all Gazetted officers, Group-B consisting of gazetted and non-gazetted employees, Group-C consisting of all non-gazetted employees and unclassified industrial employees.

6. Govt of India also owns Currency Note Press, Nashik Road which is registered under Factories Act, 1948. Its administrative control is with Department of Economic Affairs of Finance Ministry, Government of India. The General Manager, Currency Note Press is an officer under the control of Ministry of Finance. Currency Note Press is engaged in printing Bank Notes of denomination Rs. 5, Rs. 10, Rs. 50, Rs. 100, Rs. 500 and Rs. 1000 and intended by RBI and they are supplying these printed notes to the RBI Centres. The Press is engaged in sovereign functions of the Government of India. The Press has employed different group of employees categorised as Group-A consisting of all Gazetted officers, Group-B consisted of gazetted and non-gazetted employees, Group-C consisted of all non-gazetted staff and unclassified industrial employees.

7. According to them, there are two recognised trade unions India Security Press Mazdoor Sangh and ISP CNP Staff Union representing all non-gazetted staff. There is also third union by name ISP and CNP Class IV Union. All the three unions served strike notice each separately on the management of Currency Note Press/India Security Press, Nashik Road for payment of ad-hoc bonus. The

conditions of employees of CNP in different categories are governed by different set of rules issued by Government of India from time to time. Accordingly the non-gazetted employees including unclassified industrial employees were paid non-productivity linked bonus (ad-hoc bonus) as decided by the Central Government from time to time.

8. According to them, Group Incentive Scheme was introduced in both the Press from September 2001 by which monthly incentive is paid on the basis of production achieved as per the conditions laid down in the said scheme. When the said scheme was in operation Government of India, Ministry of Finance, Department of Economic Affairs *vide* its letter dt. 3/11/2003 intimated the observation of Department of Expenditure to discontinue forthwith the payment of ad-hoc bonus. In view of the said instruction, the employees of ISP and CNP were not paid ad-hoc bonus for the year 2003-04. It was policy decision of Government of India. Thus the ad-hoc bonus already paid to these workmen for the year 2002-2003 is to be recovered from them. The said action is neither illegal nor arbitrary. The employees who are availing benefit of incentive scheme are not entitled to get ad-hoc bonus. The ad-hoc bonus is customary and not covered under any statutory provision. Therefore it is submitted on behalf of both the press that the reference deserves to be dismissed as the workers are not entitled to get ad-hoc bonus. Thus they pray that reference be dismissed with cost.

9. Following are the issues framed by my Ld. Predecessor for my determination. I record my findings thereon for the reasons to follow:

Sr. Issues	Findings
No.	
1 Whether demand of the union for payment of ad-hoc bonus is tenable	Yes.
2 Whether groups incentive scheme for employees compensate the idea of bonus?	No.
3 Whether prayer to direct first party to make payment of bonus for 2003-04 & 2004-05 is legal and tenable	Yes.
4 Whether first party can be restrained in recovering bonus already paid to workmen?	Yes.
5 What order?	As per final order.

REASONS

Issues nos. 1, 2 & 3 :—

10. In this respect at the outset the first party has raised objection to this reference by saying that the first party is discharging sovereign functions therefore it is not an 'industry'. Therefore according to them the industrial dispute does not survive. In this respect the Id Adv. for the second party resorted to Apex Court ruling in **Bangalore Water Supply V/s. A. Rajjappa & Ors. AIR 1978 SC 548**. In para 161 of the judgement the Hon'ble Court on the point observed that (c) Even in Departments discharging sovereign functions if there are units which are industries and they are substantially severable, then they can be considered to come with in Section 2 (j). Section 2 (j) of I.D. Act defines 'industry'. In the case at hand the India Security Press as well as Currency Note Press though are discharging sovereign functions by printing postal stamps, court fees stamps and currency notes respectively. They are no doubt units which are industries. They are dealing with process of printing material for an on behalf of Government of India. Therefore both these institutes can be said industry within the definition of industry as contemplated under Section 2 (j) of the I.D. Act. Therefore this objection raised on behalf of first party is devoid of merit that the ISP and CNP are not industries.

11. Second objection raised on behalf of the first party is that the ISP Nashik and the CNP Nashik are two separate units having their independent managements. They have no concern with each other. However the union has raised this common industrial dispute. Therefore it is not tenable. In this respect the fact is not disputed that ISP and CNP are two different entities. However both these institutions are under the control of Central Govt. The problem of employees in both these institutions in respect of payment of customary bonus is common. The I.D. Act and the other Labour Laws are welfare legislations and the strict rules of Civil Procedure Code are not applicable to the proceedings under labour and industrial laws. Therefore, bar of multifariousness of causes of action does not arise. Workers and employees in both these institutions are facing the same problem of payment of customary bonus. Therefore they can agitate the issue in one and the same industrial dispute. Therefore this objection also does not stand to reasons.

12. Now in respect of the main question of payment of customary bonus, the Id Adv for the first party submitted that as groups incentive scheme is made applicable, workers of both these institutions are not entitled to the bonus which was being paid to them prior to the groups incentive scheme. In this respect the Id Adv. for the second party submitted that the group incentive scheme has no concern as both these units are not profit making companies. On

the other hand, they are performing sovereign and welfare activities of the State. Therefore, customary bonus which was being paid to these workers need not be stopped. In support of his argument, the Id Adv. for the second party resorted to Apex Court ruling in **Workmen of Kettlewell Bullen & Co. Ltd. V/s. Kettlewell Bullen & Co. Ltd. 1994 CLR 511** wherein on the point Hon'ble Court referred to its various earlier decisions and observed that:

"It is observed that in the instant case there was payment of uniform rate of 10.5% of salary of wages for an unbroken period of 9 years from 1965 to 1973 which was a sufficiently long period and Tribunal could have reasonably drawn an inference that the said payment was customary and traditional bonus on the occasion of puja festival."

13. In the case at hand, admittedly the workers were being paid ad-hoc bonus equal to 30 days wages every year at the time of Diwali festival. Therefore this ad-hoc bonus also can be called customary bonus as it was being paid continuously since 1996 to 2003. By a letter dated 28/10/2004 the Govt of India directed that the Central Government employees are paid bonus under three schemes (a) Productivity linked scheme (b) non-productivity Linked scheme (c) any other incentive scheme in the organisation and they have stopped the ad-hoc bonus by saying that the workers cannot get benefit of two schemes. Infact customary bonus has no concern with the groups incentive scheme. Therefore in my opinion, the customary bonus of the workers need not be withheld. The ISP and CNP are not profit making companies, therefore, question of payment of bonus depending on productivity or profit of the company has no concern. In this backdrop, I come to the conclusion that the management was not justified in withholding the customary bonus of the workers of ISP as well as CNP. The workers in both the units are entitled to the customary bonus at the time of Diwali festival which was being paid for considerable long period and more than seven years. I also hold that, the action of the management is not justifiable who have started recovery of the bonus already paid. Accordingly, I decide issue no. 1 in the affirmative that demand of the union for payment of ad-hoc bonus is tenable. Consequently, I decide the issue no. 2 in the negative that the group incentive scheme for employees does not compensate the idea of bonus. I decide the issue no. 3 in the affirmative that the prayer to direct the first party to make payment of bonus for the year 2003-04 to 2004-05 is legal and tenable. Accordingly I decide these issues.

Issue no. 4:—

14. In the light of above discussion, I have come to the conclusion that the workmen in both the above establishments are entitled to receive customary bonus at the time of every Diwali festival. I also held that the

action of the management is unjust and improper to stop payment of customary bonus. Therefore, action of management in recovering the bonus already paid has to be stopped and restrained. Thus it needs no further discussion to arrive me at the conclusion that first party can be restrained from recovering the bonus already paid. Accordingly I decide the issue no. 4 in the affirmative and proceed to pass the following order:

ORDER

- (i) Reference is allowed with no order as to cost.
- (ii) The demand of the union for payment of ad-hoc/ customary bonus is declared legal and valid.
- (iii) The first party is directed to make the payment of bonus for the year 2003-04 & 2004-05 @ 30 days emoluments.
- (iv) The first party is hereby restrained from recovering the bonus already paid to the workmen.

Date: 12.12.2011

K.B. KATAKE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का० आ० 868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजमेन्ट ऑफ सैन्ट्रल फाइल रिसर्च इस्टीट्यूट प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट (संदर्भ संख्या - 100/94/7) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-2012 प्राप्त हुआ था।

[फा० संख्या एल- 42011/15/2006 आई०आ० (डी० य०)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th Feb., 2012

S.O. 868.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 100/94/7**) of the Central Government Industrial Tribunal cum Labour Court No. 1 **Dhanbad** as shown in the Annexure, in the Industrial dispute between **The Employers in relation to The management of Central Fuel Research Institute and their workman**, which was received by the Central Government on **06.02.2012**

[F.No. L-42011/15/2006-IR(DU)]

RAMESH SINGH DESK OFFICER

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.I, DHANBAD.

In the matter of a reference U.S. 10(1) (d) (2A) of the Industrial Disputes Act, 1947

Reference No. 18 of 2007

Parties: Employers in relation to the management of Central Fuel Research Institute.

AND

Their Workmen

Present : Shri H.M. Singh,

Presiding Officer,

Appearances:

For the Employers : Shri A. Kumar, Advocate

For the Workers : None

State : Jharkhand.

Industry : Research.

Dated, the 13.1.2012.

AWARD

By Order No. L-42011/15/2006-IR-(DU) dated 6.3.2007 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the demand of the Bhartiya, Audhoyogik Shremik Singh. Dhanbad for compassionate employment and monetary compensation to the dependent a of Late Shri Baiju Oraon by the management of Central Fuel Research Institute, Digwadih Dhanbad is legal and justified? If so, to what relief the concerned dependent of the deceased is entitled to?"

2. The case of the concerned workmen is that he was in employment with the management and he was employed as Security Guard, which is permanent nature of job. The concerned workmen, Baiju Oraon was admitted in RIMS on 14.11.2004 but during the course of medical treatment he died on 15.11.2004 on account of C.R. Failure. At the time of his death, he was 40 years of age. He was in employment with the management and he was employed as security guard. He died on account of accident arising on his way to here from duty out of and in the course of his employment. After the death of the concerned workman, the only remedy available to the dependents of the

deceased workman is compassionate appointment to Piri Orain, wife of the deceased workman, She fulfilled all the criteria prescribed by the management for appointment on compassionate ground. His dependents are also entitled to compensation. But the management has either given employment to Piri Orain nor paid compensation.

It has been prayed that the Hon'ble Tribunal he pleased to answer the reference in favour of the petitioner to award relief in the forms of appointment of Piri Orain on compassionate ground and payment of compensation.

3. The case of the management is that Baiju Orain was hired/appointed/engaged in CFRI now known as CIMFR, only on contract basis on consolidated amount and nothing more than that. He was not a permanent employee/worker of CFRI known as CIMFR. From the death certificate of Baiju Orain granted by Dr. C.P. Sahay Unit appears that he died due to C.R. Failure in RIMS at Ranchi. He did not die while/during performing any duty in CIMFR which is not an 'Industry' as defined under I.D. Act, 1947. From the death certificate submitted by the applicant in the instant case, it transpires that on 14.11.04 the deceased Baiju Orain was not present in Digwadih within Dhanbad District, rather he was died in Ranchi. The scheme of compassionate appointment and its non-applicability on the applicant in the instant case does not arise at all for the simple reason that the deceased Baiju Oraon was not the permanent employee/worker in CIMFR, rather he was only hired on a contract basis on consolidated amount for the time being which was duly. Extended time to time only and hence the family of the deceased Baiju Oraon is not entitled to get compassionate appointment/compensation.

In such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to hold that Central Institute of Mining & Fuel Research (CIMFR) is not an Industry and also to hold that the demand of the Union concerned is neither legal nor justified.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned petitioner has not produced any oral evidence nor any document has been proved.

The management produced Janardhan Mohan Choudhary as MW-1. He stated in affidavit that the CIMFR/CFRI Dhanbad is a constituent institute of the Council of Scientific & Industrial Resources (CSIR) which is not an Industry U.S. 2(i) of the I.D. Act and hence the provision of the Act is not applicable. Baiju Oraon was not the permanent employee of the management rather he was a temporary worker on contract for fixed term and fixed

amount and no work no payment was made to the employee/worker who is working on contract for fixed term & fixed amounts.

6. Considering the above facts and circumstances, I hold that the demand of the Bhartiya Audhoyogik Shramik Sangh, Dhanbad for compassionate employment and monetary compensation to the dependent of Late Shri Baiju Oraon by the management of Central Fuel Research Institute, Digwadih, Dhanbad, is not legal and justified and hence the dependent of Late Shri Baiju Oraon is not entitled to any relief.

H.M. SINGH, Presiding Officer.

नई दिल्ली, 6 फरवरी, 2012

का० आ० 869.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जरनल मैनेजर, एम०टी०एन०एल०लि० दादर (वैस्ट) प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण मुम्बई के पंचाट (संदर्भ संख्या सी०जी०आई०टी०-2/6 आफ 1991 को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-2012 को प्राप्त हुआ था।

[फा० संख्या एल- 40011/14/1990 आई०आर० (डी० य०)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th Feb., 2012

S.O. 869.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT-2/6 of 1991**) of the Central Government Industrial Tribunal cum Labour Court No. 2 Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief General Manager MTNL Ltd. Dadar West and their workman**, which was received by the Central Government on **06.02.2012**

[F.No. L-40011/14/1990-IR(DU)]

RAMESH SINGH DESK OFFICER

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

NO. 2, MUMBAI

PRESENT

K.B. KATAKE

Presiding Officer

REFERENCE NO. CGIT-2/6 of 1991

**EMPLOYERS IN RELATION TO THE MANAGEMENT
OF MAHANAGAR TELEPHONE NIGAM LTD.**

The Chief General Manager

Mahanagar Telephone Nigam Ltd.

S.V. Marg

Dadar (W)

Mumbai 400 028

AND

THEIR WORKMEN

The President

Bombay Telephone Canteen Employees

Association

C/o. Prabhadevi Telephone Exchange Canteen

Dadar (W)

Mumbai 400 028

APPEARANCES:

FOR THE EMPLOYER : Ms. S.I. Shah, Advocate

FOR THE WORKMEN : Mr. M.B. Anchan,
Advocate

Mumbai, dated the 22nd December, 2011.

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No. L-40011/14/90-IR(DU), dated 31.01.1991/04.02.1991 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:—

"Whether the action of the management of Mahanagar Telephone Nigam Ltd. in terminating the services of 14 workmen (as per Annexure-A) working in the Telephone House Canteen, Telephone House of MTNL Bombay w.e.f. 7/10/1988 and whether the management of MTNL were also justified in withholding wage from Aug 1988 and in non-implementation of fourth pay commissions pay scale w.e.f. 1/1/1986? If not, to what relief the concerned workmen are entitled to?"

Name of worker/employee as per Annexure 'A'

Sr. no. Name

- | | |
|-----|-------------------------|
| 1. | Mr. Laxman B. Dalvi |
| 2. | Mr. Shekar K. Salian |
| 3. | Mr. Sadashiv P. Poojari |
| 4. | Mr. Bharat Devar |
| 5. | Mr. Shodan S. Sapaliga |
| 6. | Mr. Esaki Devar |
| 7. | Mr. Ramesh Mahadik |
| 8. | Mr. Sanjeeva P. Salian |
| 9. | Mr. Sambhaji G. Yesane |
| 10. | Mr. Yadgiri Lavanani |
| 11. | Bhaskar B. Kotian |
| 12. | Arun Bogan |
| 13. | Narayanan K. Jagruthkar |
| 14. | Suresh B. Salian |

2. The reference was remanded back to this Tribunal *vide* Hon'ble High Court's order dated 13/12/2001 passed in W.P. No. 3024 of 1995 & WP No. 5580 of 1995. The said writ petitions were filed by the second party Association challenging the Award dated 1/3/1995 passed by this Tribunal in the above reference.

3. After receipt of copy of the order from Hon'ble High Court, notices were sent to both the parties. None of the parties appeared before this Tribunal. Thereafter notices were again sent to parties. Today when both the parties are present, Mr. S.J. Shetty, General Secretary of the union filed application Ex-23 praying to dispose of the reference as they do not want to pursue the matter. Since the union does not want to prosecute the reference, I think it proper to dispose of the reference. Hence the order:

ORDER

Reference is dismissed for want of prosecution with no order as to cost.

Date: 22.12.2011 K.B. KATAKE, PRESIDING OFFICER

नई दिल्ली, 6 फरवरी, 2012

का० आ० 870.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डारेक्टर शुगरकेन ब्रीडिंग इंस्टीट्यूट वीराकेरालम, कोयम्बटूर प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण चैन्सी के पंचाट (संदर्भ संख्या - 64/2007 को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-2012 को प्राप्त हुआ था।

[फा० सं एल- 42011/128/2007 आई०आर० (डी० यू०)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 6th Feb., 2012

S.O. 870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 64/2007) of the Central Government Industrial Tribunal cum Labour Court **Chennai** as shown in the Annexure, in the dispute between the employers in relation to **the management of Director, Sugarcane Breeding Institute Veerakeralam, Coimbatore and their workman**, which was received by the Central Government on 06.02.2012.

[F.No. L-42011/128/2007-IR(DU)]

RAMESH SINGH, DESK OFFICER

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT

CHENNAI

Thursday, the 12th January, 2012

Present : A.N. JANARDANAN

Presiding Officer

INDUSTRIAL DISPUTE No. 64/2007

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Sugarcane Breeding Institute and their Workman)

BETWEEN

Sri A. Mohanraj : 1 Party/Petitioner

16/55, Jeva Street, K.C. Palayam

Coimbatore-641007

Vs.

The Director : 2nd Party/Respondent

Sugarcane Breeding Institute

Veerakeralam

Coimbatore-641007

Appearance:

For the 1st Party/Petitioner Smt. A. Veeramarthini, Advocate

For the 2nd Party/Management Sri M.T. Arunan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-42011/128/2007-IR(DU) dated 26.10.2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Sugarcane Breeding Institute in terminating the services of their workman Sri A. Mohanraj w.e.f. March, 1993 is legal and justified? If not, to what relief the workman is entitled to?"

2. The reference was taken on file and numbered as ID 64/2007. Pursuant to notice both parties entered appearance through their respective counsel. The petitioner entered appearance through Legal Aid counsel appointed by the Chennai District Legal Services Authority and the Respondent appeared through his Counsel. The petitioner filed claim statement but the Respondent initially did not file any Counter Statement. Afterwards the Respondent stood continuously absent and remained unrepresented, eventually leading to set him ex-parte.

3. The petitioner thereafter led evidence getting himself examined as WW1 filing affidavit in lieu of Chief Examination and marked Ex. W1 to Ex. W14. There was no cross-examination. Consequently as per award dated 27.04.2009 petitioner was ordered to be reinstated into service forthwith with back wages and all other attendant benefits together with costs of the proceedings.

4. The said award on being challenged before the Hon'ble High Court of Madras in Writ Petition No. 11291 of 2009 as per order dated 16.11.2009 set aside the ex-parte award and remitted back the matter to this Tribunal with a direction to dispose of the case afresh.

5. Thereafter both sides entered appearance and the Respondent filed reply (to the Claim Statement).

6. The case of the petitioner in the Claim Statement

briefly is as follows:

The petitioner had been working as a Casual Labourer under the Respondent from 02.02.1978 till March, 1993. About 150 Casual workers abruptly commenced a strike from 30.01.1992. The petitioner was not a participant in the strike. During April, 1993, the petitioner fell ill. He also lost his mother and father in a span of 20 days. Hence, he was not able to attend his duties for a brief period. Thereafter, when he returned to duty, he was not permitted to join duty due to action of the striking labourers to move the Court. The conciliation proceedings launched ended in a reference of the dispute of striking labourers with the Management to the Industrial Tribunal, Chennai. His request was turned down in the guise of subjudice. In appeal before the High Court, Chennai against the award of the Industrial Tribunal there arose an order to allow the striking labourers to join duty from 01.12.2000 with the monetary benefit of 24 months wages as arrears. Himself with one labourer, S. Mohan and 26 others got an order in OA 823/94 connected with OA 1410/94 from the Central Administrative Tribunal directing the Respondent to create posts in grades consistent with the need of the institution and to absorb the applicants. On 01.08.1997, an order was passed to allow them to join duty but the petitioner alone actually was not permitted to join duty. No reason has been given for such act. The action of the Respondent is in clear violation of Article 14 and 16 of Constitution of India and is unlawful and is against natural justice. The Management has taken vindictive stand against the petitioner. It is prayed that the petitioner may be reinstated with full backwages, continuity of service and other benefits together with the costs of the petition.

7. Reply statement averments bereft of unnecessary details are as follows:

Petitioner joined the Institute at Coimbatore as a Casual Labour for seasonal agricultural field work on 16.05.1978 and not on 02.02.1978 as alleged. He was not working continuously till March 1993 as stated. He discontinued himself thrice in 1978 and 1993. His attendance details for different years are:

1978-1979 to 1982-1983	- Worked for 5 years
April 1983-Dec. 1983	- Discontinued for 9 months
Jan. 1984 to Feb. 1984	- Worked for 14 days
March 1984 to March 1990	- Discontinued for 6 years
1990-1991 to 1992-1993	- Worked for 3 years
1993-1994	- Worked for 17 days
April 1993	- Discontinued on his own

Evidently he is a habitual absentee and was given chance to rejoin twice. He is physically too weak to do field work of a casual worker. At the conciliation stage finally the Institute agreed to engage him as a minimum wage casual labour like other 152 workers who went on strike from February 1992 till rejoining in December, 2000, which offer petitioner deliberately refused demanding temporary status and which was not possible as per rules, for which he has had to satisfy two conditions as per G.O.I. Order DoPT Order, OM No. 51016/2/90-Estt. (C) dated 10.09.1993 *viz.* that he should be on rolls on 01.09.1993 and (ii) must have worked for 240 days during the preceding year *viz.* 01.09.1990 to 31.08.1993. Petitioner worked for less than 150 days during the period. He does not satisfy both the conditions stipulated. Still he was considered for re-engagement sympathetically as minimum wages casual labour in the conciliation which failed due to his recalcitrant attitude. He was a habitual absentee and inconsistent worker with very poor attendance. He has not produced evidence for falling ill or losing his parents within a span of 20 days. Nor was there any information passed for permission to be away from work for a long period. Now on the fascination of better conditions of service and wages to temporary status category workers he is out to justify his lapses which lack credibility. After discontinuing work in April 1993 he never approached the Institute before approaching the Labour Commissioner. There is no proof for that. He is not similar to other 152 labourers on strike. He conjured imaginary reason for justifying his lapses. Order of the High Court is not applicable to him as he was not a member of the Union the went on strike. Still he was offered re-engagement as the other 152 workers which he turned down. It is mis-representation that he was one among the 27 workers who approached the Central Administrative Tribunal for regularization because 26 workers other than him were already on the rolls with temporary status from 01.09.1993. He was not on the rolls since he was absentee. He included his name in the petition before Central Administrative Tribunal with malicious intention to mislead the Court. Demand of 26 workmen was not for rejoining duty but for regularization. His stand in the conciliation was only for temporary status for which he is not eligible. P2 is only an interview letter in which he was not selected to Group 'D' post. Even interview letter from the Employment Exchange was a step to regularize him. At the time of filing the case in Central Administrative Tribunal in 1996 he was not in the rolls since he had discontinued from April 1993. He misled that his case is similar to the 26 other petitioners in OA No. 824 of 1994 and 1410 of 1994. Petition is to be dismissed.

8. Points for consideration are:

- (i) Whether the termination of the workman *w.e.f.* March 1993 is legal and justified?

(ii) To what relief the concerned workman is entitled?

9. Evidence consists of the testimony of WW1 and Ex. W1 to Ex.W14 on the petitioner's side and that of MW1 and MW2 and Ex. M1 to Ex. M7 on the Respondent's side.

Points (i) & (ii)

10. Heard both sides. Perused the pleadings, documents, evidence and the written arguments on either side. Both sides advanced their arguments fully in support of their respective contentions. On behalf of the petitioner reliance was placed on a catena of decisions of the Apex Court and other Courts in the top hierarchy. They include decision of the Apex Court in:

- SCOOTERS INDIA LTD. VS. M. MOHAMMAD YAQUB AND ANOTHER (2001-1-SCC-61) wherein it held that "*Hence, where the absentee workman was required to join duty by a specified date but when attempted to join duty was prevented from doing so, held, the said standing order could not be used to effect automatic termination of services*".
- M. ANANTHAN VS. PRESIDING OFFICER, PRINCIPAL LABOUR COURT, CHENNAI AND ANOTHER (2010-1-LLN-359) wherein Hon'ble High Court of Madras held that "*Termination is illegal for want of enquiry if it is based on misconduct of alleged absence—Termination is illegal if it is based on relevant Standing Orders for non-compliance of S.25F of Industrial Disputes Act*".
- DIRECTOR, FISHERIES TERMINAL DIVISION VS. BHIKUBHAI MEGHAJIBHAI CHAVDA (2010-LLJ-3-SC) it was held that "*Burden of proving 240 days' service is on claimant (workman) and burden is discharged by workman deposing from witness box—Burden thereafter shifts to employer—As employer in this case failed to produce complete records it could not sustain its stand—Further, on facts, procedure under Section 25-G, held, not followed*".
- D.K. YADAV VS. J.M.A. INDUSTRIES LTD (1993-3-SCC-259) wherein Supreme Court held "*Constitution of India — Art. 14—Principles of natural justice implicit under-action/decision, even administrative in nature, which involves civil consequences, must be just, fair, reasonable, non-arbitrary and in consonance with principles of natural justice—Civil consequences—Meaning of rules of procedure must withstand the test of Art. 14—Administrative Law—Natural justice-Words and phrases—"Civil consequences. Constitution of India—Arts. 21 & 14 — Include right to means of livelihood—rules of*

procedure for deprivation of the right must be just, fair and reasonable. Administrative Law—Natural justice—just, fair and reasonable action is an essential inbuilt of natural justice. Administrative Law—Natural justice—Fairness-Duty is to act fairly, not so much to act judicially—Action should be impartial, and should be free from even appearance of unfairness, unreasonableness and arbitrariness.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable. 13.All matters relating to employment include the right to continue till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavor. They must be conformable to the rights guaranteed in Parts III and IV of the Constitution. Article 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Articles 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice are in integral part of the guarantee of equality assured by the Article 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of natural justice. Article 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the Court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the effect thereof is the end result".

- TAMIL NADU STATE TRANSPORT CORPORATION, VILLUPURAM VS. JOINT

COMMISSIONER OF LABOUR (CONCILIATION), CHENNAI AND ANOTHER (2011-1-LLJ-646) wherein Hon'ble High Court of Madras held "*Further dismissal of workman for unauthorized absence, held, too harsh—Without approval, workman deemed to be in service-Direction to reinstate him with 50% back wages, issued*".

— MANAGEMENT, STATE EXPRESS TRANSPORT CORPORATION, CHENNAI VS. PRESIDING OFFICER, 1ST ADDITIONAL LABOUR COURT, CHENNAI AND ANOTHER (2011-11-LLJ-878) wherein Hon'ble High Court of Madras held "*No enquiry conducted, nor evidence of circumstances leading to dismissal led before Labour court- Dismissal rightly held attracted Section 25-F, and order for reinstatement with back wages of workman, upheld as legal and valid.*"

11. Notable arguments advanced on behalf of the petitioner include, *inter-alia* that petitioner availed leave during March 1993 reporting the fact to the Management but he was denied employment in April 1993 when he reported for joining duty, that non-regularization of the petitioner as per Central Administrative Tribunal order dated 01.09.1997 is illegal, that there was no charge memo issued or enquiry held violating principles of natural justice before termination, that Management with malafide intention to deprive the benefits and status of permanent worker treated him as casual worker which is unfair labour practice, that he has worked for more than 240 days every year and in 1992-1993 he was employed for 252 days including Sundays and three National Holidays, that no contra evidence was adduced by the Management, that he cannot be terminated without due course of laws since the establishment comes under Chapter-5(B) of the ID Act, that no notice or notice pay or compensation has been paid to him, that the termination is contrary to Section-25F and illegal under Section-25(F)(7) of the ID Act and he is to be deemed to be continued in service without any interruption.

12. Conspicuous arguments on behalf of the Respondent include, *inter-alia* that he discontinued permanently on his own from April 1993, that in a span of 15 years, he worked for 8 years only with three intermittent long abstinence. No evidence adduced for his absence nor he applied for any leave or was granted. He did not report for duty in April 1993 and therefore no question of denial of employment arises. Central Adminstrative Tribunal award is not applicable to him since he is absent from April 1993. He abstained on his own and was getting more income from his on parallel business. There was no reason to single out him from conferment of temporary status, if he was on the rolls at the relevant time, in the conciliation proceedings he clung for temporary status alone resulting in the failure

of the conciliation, though Management was considering his re-engagement as casual labour. He was engaged only as a seasonal worker, that he was not interested in the heavy field work, the wages then being low, that now after seeing temporary status labourers with better wage and conditions he has been out to try to grab those benefits, discernibly from the fact that the ID was raised only in 2001, Seven years after he left the job, that in 1993 he worked only for 202 days adding 52/Sundays and 3 National Holidays to 150 days worked, that he has not proved for having worked more than 240 days in March 1993 and that there was no need to terminate the petitioner by the Institute.

13. The question for consideration under reference is whether the termination from service of the petitioner w.e.f. March 1993 is legal and justified. According to petitioner he was not allowed to join duty when he reported after his absence for a short period in 1993 April. But according to the Respondent petitioner did not report for duty in April 1993. He was discontinuing of his own. It is not disputed that the petitioner has been irregular in his attendance as elaborately mentioned in the Counter Statement. Except the oral evidence from either side there is no material to substantiate the rival contentions. In other words there is only oath against oath. In a decision (2010-1LLJ-352) cited above it has been held that once the petitioner deposes in the box supporting his case of having worked for 240 days he stands primarily to have established his case and it is upon the other side to rebut the evidence by cogent evidence since thereafter the burden of proof shifts on the Respondent. The Respondent has not succeeded in rebutting the case of the petitioner by concrete evidence. Though some records have been produced they do not constitute the complete record to exhaustively rule out the case of the petitioner. Arguments without sound edifice in an again without pleadings cannot have any leg to stand in the eye of law. It is evident and admitted that the petitioner has been unauthorizely absenting from work during longer spells of period extending to months and years and that he was being allowed to rejoin after those bulk durations of absence. Though the case of the petitioner is that he has had applied for leave and before which he has passed intimation to the Management, but which is denied by the latter the same does not stand substantiated. The fact that petitioner was sick and that he had his father and mother lost in a span of 20 days is a matter put forward by him to justify his absence in the latest occasion but the same also has not been substantiated. Whether or not this is a case of retrenchment for non-compliance of Section-25F of the ID Act and other provisions or is a mere case of petitioner not reporting for duty of his own is the crucial factor for clinching the issue. As already mentioned supra when that fact having been deposed to by the petitioner but not being disproved by the Respondent, this question has to be answered in favour

of the petitioner. It is not disputed that petitioner has not worked for good number of years under the Management. There have been long spells of periods during which he stood outside the work after all of which except the last one as is the case of the petitioner the Management has reinstated him into service and allowed to continue as minimum wage casual labour. The said conduct appears to be a conduct of the petitioner approved by the Management from time to time twice. Now at the third occasion, the petitioner after having absented for reasons, apparently genuine, reported for duty he has not been permitted to join duty by denial of employment, as he pleads. Evidently no enquiry has been held after issuance of a memo of show cause or any charge sheet. Habitual absenteeism is also a misconduct for which an enquiry is contemplated in accordance with the rule of Bipartite Settlements. Whether it is by way of termination in the sense of retrenchment or by way of petitioner's absence of his own, not permitted to be set right with his re-entry into service, there is cessation of employment for which unless preceded by notice or notice pay in lieu of compensation and retrenchment compensation the action is rendered void. There is no compliance of all or any of the said requirements in the present case. Therefore, the termination of the petitioner is bad in law.

14. It has been made clear that the Management has no need to terminate the petitioner or to single out him from conferring temporary status discriminating him from his other counterpart employees who are already conferred with temporary status, but which was denied to the petitioner for the reason that he was not on the rolls on the crucial date *viz.* 01.09.1993 and for the other reason that he did not satisfy the condition of having to put in 240 days within one year immediately preceding 01.09.1993, as against the case of the petitioner that he has completed the said period taking into account the number of days actually worked when added to that the Sundays and the three National Holidays. This fact attempted to be controverted by the Management showing that even under that pattern of computation he has had worked only for 202 days, cannot be sustained for the reason that the whole of the record so as to exhaustively arrive at such conclusion has not been produced and hence rebutted by the Management.

15. Another case of the Management is that the petitioner is too weak to work in the fields and that he has been doing parallel business during his short or long spells of periods of unauthorized absence and he was actually not in need of the present job and further that his aim is to grab the benefits of temporary status workers when he came to know that they have started receiving better conditions of wages and benefits once they were conferred with temporary status.

16. At this stage we are not concerned with the

question of conferment of temporary status to the petitioner since we have to confine ourselves to the reference alone. From the stand of the Management if seems that they are against conferment of temporary status to the petitioner due to reasons that petitioner does not satisfy the conditions prescribed in the circular for conferment of the same for which a cut-off date is fixed and the scheme is envisaged to be implemented as a one-time measure. When in the conciliation stage the petitioner is shown to have been clinging for temporary status and for that reason the conciliation was failing ending in a failure report though the Management was prepared to re-engage him as minimum wage casual labour, he was reluctant to accept it, then it is pertinent to ask why the magnanimity shown by the Management to re-engage him as minimum wage casual labour could not be extended to him at this stage of this ID duly referred to this Tribunal by the Ministry of Labour and Employment? In fairness at this stage even that would well be granted to the petitioner because the duty of the employer is to act fairly and not so much to act judicially. It is not disputed that petitioner worked under the Management for quite long years though with intermittent break or absenteeism. Every such break happened to be ratified by the Management virtually approving his conduct by re-engaging him time and again. That he is not physically well to work in the field does not stand substantiated. It remains a mere *ipse-dixit*. It appears that the Management is not far out to see that he is prevented from re-engagement at any cost. They expressed their magnanimity during the conciliation stage to take him back in the status of minimum wage casual labour. They were expressing their inability just to confer him with temporary status because as they know they cannot do so legally in consonance with the DoPT directions conveyed under the circular. At this stage it is again relevant to ask, if petitioner were re-engaged during the relevant time would not he have been on the rolls as on 01.09.1993 for being with eligibility for conferment of temporary status? On an appreciation of the entire facts, materials and circumstances what appears is that there need not be a formidable objection for the Management to re-engage him and confer him with temporary status because under the scheme evolved the noble object and intendment of the Management was to confer temporary status to all the workmen with no exception. Petitioner had been recruited under due process of law. He had also been called for interview for the post of Group 'D', which was declined. That does not mean that he is to be denied temporary status if he falls under the eligibility criteria fixed in the scheme circulated by the DoPT. Here again it is worthy to remember that the Management has the duty to act fairly and not so much to judicially in the matter of conferment with temporary status to the petitioner. It is to be noted that the two condition stipulated are not to be the essence of the true purport and scope of the scheme to confer temporary status having regard to the fact that the petitioner has had rendered long years of service, though

with intermittent spells of duration of habitual absenteeism, but later condoned by the Management. True, that aspect of the matter comes into the picture after once the petitioner has been re-engaged in the status in which he was while he left the job or was terminated/retrenched. Again, the same is beyond the scope of the reference.

17. However, from my above discussion it is to be held that the petitioner has to be reinstated into service. Thereafter the question as to conferment of temporary status may be decided by the Management in a fair manner so as to meet the ends of justice actuated by the concept of justice, equity and good conscience on par with his counterpart workmen already conferred with the said status.

18. In the result it is ordered that the petitioner be reinstated into service forthwith with continuity of service and all attendant benefits but without back wages.

19. The reference is answered accordingly.

(directed to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th January, 2012)

A.N. JANARDANAN, Presiding Officer,
Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri A. Mohanraj

For the 2nd Party/Respondent : MW1, Sri S. Rajamohan
: MW2, Sri N. Vijayan Nair

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ex.W1	04.02.1982	Call letter from Distt. Employment Exchange No. Ex2/U/S3/82
Ex.W2	May, 1983	Copy of the Memorandum regarding sponsorship from Employment Exchange
Ex.W3	_	Wage for the month of February and March 1993
Ex.W4	_	Copy of Employee's Provident Fund Contribution for the years 1992-1993, 1993-1994 and 1994-1995
Ex.W5	25.08.1993	Circular from ICAR to all Directors/Joint Directors of Research Institutes/Centres regarding computing 3 National Holidays and Sundays for computing 240

days in a year while considering the eligibility of Casual Labourers for grant of Temporary Status

Ex.W6	01.08.1997	Copy of the Central Administrative Tribunal Judgement in OA Nos. 823 of 1994 and 1410 of 1994
Ex.W7	20.03.1997	Copy of the Institute office Order No. 5-18/92-Estt. conferring/granting Temporary Status with effect from 01.09.1993 subject to terms and conditions
Ex.W8	22.12.2000	Representation by the petitioner to the Institute to provide job against Central Administrative Tribunal order
Ex.W9	17/22.02.2001	Copy of the reply note of the Institute No. 5-7/2000-Estt. on the representation of the petitioner
Ex.W10	28.02.2001	Copy of the representation of the petitioner to the Institute to provide employment
Ex.W11	04.05.09.2003	Copy of the letter from senior Administrative Officer of the Institute to the under Secretary (C.S.) regarding re-engagement of the petitioner
Ex.W12	17.08.2007	Copy of the Failure of Conciliation Report
Ex.W13	05.11.2007	Copy of the notice to the parties to appear before CGIT-cum-Labour Court, Chennai on 22.11.2007
Ex.W14	31.03.2004	Copy of the letter from Senior/ Administrative Officer to the Assistant Commissioner of Labour (Central) regarding reinstatement of the petitioner

On the Management's side

Ex.No.	Date	Description
Ex.M1	23.11.1994	Copy of ICAR Circular grant of Temporary Status to Labourers
Ex.M2	10.09.1993	Copy of DoPT memorandum

		guidelines for grant of Temporary Status
Ex.M3	14.10.1994	Copy of Central Administrative Tribunal order in OA No. 823 of 1994
Ex.M4	16.05.1978	copy of Muster Roll with acquittance proof of date of joining
Ex.M5	-	Copy of Muster Roll and register of wages proof for only 14 days of work during Jan, February 1984
Ex.M6	10.04.1990	Copy of Muster Roll-Proof for rejoining for the third time
Ex.M7	March 1993	Copy of last wage slip Presiding Officer

नई दिल्ली, दिनांक 6 फरवरी, 2012

का० आ० 871.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दि० मैनेजर (पी० एण्ड ए०) रिचर्स एण्ड चरनदास (1972) लि०, मुलुंड प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण मुम्बई के पंचाट (संदर्भ संख्या-सी०जी०आई०टी०-2/71 आफ 2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2012 को प्राप्त हुआ था।

[फांसंख्या एल०-42011/32/2000 आई०आर०(डी०य०)]

रमेश सिंह, डेस्क अधिकारी

New Delhi the 6th Februry,

S.O. 871.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT-2/71 of 2000**) of the Central Government Industrial Tribunal cum Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager (P&A) Richardson & Cruddas (1972) Ltd. Mulund West Mumbai and their workman, which was received by the Central Government on 06.02.2012.

[F.No. L-42011/32/2000-IR(DU)]

RAMESH SINGH, DESK OFFICER

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

K.B. KATAKE

Presiding Officer

REFERENCE NO. CGIT-2/71 OF 2000

EMPLOYERS IN RELATION TO THE MANAGEMENT OF RICHARDSON & CRUDDAS LTD.

The General Manager (P&A)

Richardson & Cruddas (1972) Ltd.

Mulund Works

L.B.S. Marg

Mulund (W)

Mumbai 400 080.

AND

THEIR WORKMEN

The President

Association of Engineering Workers

252, Janta Colony

Ramanarayan Narkar Marg

Ghatkopar (E)

Mumbai 400 077.

APPEARANCE:

FOR THE EMPLOYER : Mr. S.Z. Choudhary

Advocate.

FOR THE WORKMEN : Mr. Abhay Kulkarni,

Advocate.

Mumbai, dated the 23rd December, 2011

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-42011/32/2000-IR(DU) dated 31.07.2000 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s Richardson & Cruddas (1972) Ltd. Mulund Works

Mumbai by not allowing the workers (List enclosed) to join their duties is justified? If not, to what relief the workers are entitled?"

List of workmen

Sr. No. Name

1. Chandrakant Dajiba Mohite
2. Govind Chimaji Gambhire
3. Santosh Gangaram Nalawade
4. Sambhaji Ramrao Kachole
5. Dhammanand Bhagwan Raibole
6. Tatu Janardan Deshmukh
7. Ankush Bapurao Borade
8. Uttam Malhari Waghmare
9. Raosaheb Sabale
10. Dnyaneshwar. V. Pawar
11. Sunil Baliram Raibole
12. Santosh Dattatraya Jadhav
13. Vaijanath Malhari Waghmare
14. Ravindra B. Salian
15. Navneet V. Tambe
16. Jairam Mohiете
17. Chandrakant Chimaji Manghute
18. Kamlakar Tukaram Pagare
19. Bhaguram Pandurang Salvi
20. Satendra Ramshing Sinha
21. Nagendra Raghunandan Yadav
22. Ajay Ravsahed Dhage
23. Sudhir Sakharam Parab
24. Chandu Sitaram Kairamkunda
25. Dilip Salvaram Satpute

2. After receipt of the reference from Ministry, in response to the notices both the parties appeared through their legal representatives. The second party union has filed its statement of claim at Ex.-9. According to them, the first party is a Government company. It has two units in Maharashtra. One is at Byculla and the other at Mulund. The Company is engaged into and continuing doing unfair

labour practices of reduction of workforce inspite of availability of work. In order to harass the employees, they are forcing them to accept voluntary retirement scheme, illegal termination and such other means. Initially to make out false case of non availability of work and funds, the company restorted to tactics of harassment of non-payment of earned wages to the workmen. When workmen were sufficiently harassed, company introduced VRS and forced the employees to accept the same. By this way they managed to reduce workforce to a great extent. The company also resorted to unfair labour practice by engaging contract labourers through bogus contractors for doing the regular work of perennial nature. Through bogus contractors the company has engaged helpers, welders, plumbers, fitters, fabricators, masons, grinders etc. These works are of perennial nature. The company is recruitment such workers through bogus contractors in order to deny its workmen their legitimate rights and dues. P.Vishal and Co. is one of such bogus contractor engaged by the company to supply labourers. The said company allegedly supplied all the workmen concerned in the reference. They are in the employment of the company since the date shown in the annexure. The workmen have put in continuous service of 240 days as required under the provisions of Industrial Disputes Act. These workers have joined the Association of Engineering Workers to claim their legitimate dues and rights including that of permanency. These workmen were not allowed weekly off. They were also forced to work on national holidays. These workmen were never given any letter of appointment or period of appointment. They are not paid overtime wages. Management threatened them when they attempted to address their legitimate grievances.

3. The management did not like the unity of the workmen. Therefore retaliation of the efforts of the concerned workmen to organize themselves, the management terminated the services of the said workmen without any cause or reason and without following due process of law and in utter violation of Section 25 F of the Act. Feeling aggrieved, the said workmen through union approached the office of RLC (C) and raised industrial dispute. However conciliation failed as management did not appear and co-operate. Therefore RLC (C) sent the report to Government. The company has illegally terminated the services of workmen under reference and as such they all are entitled to reinstatement with full back-wages, continuity of service and other consequential benefits. The union therefore prays that the termination of services of workmen under reference be declared illegal. The union also prays for direction to the company to reinstate all the workmen with full back-wages, continuity of service and all other consequential benefits.

4. The management resisted the statement of claim vide its written statement at Ex-10. According to them, the reference has not been espoused by its workmen. Thus it is not tenable. According to them, there is no relationship

of employee-employer between the workmen under reference and the company. The persons concerned were intermittently engaged by an independent contractor as per the exigencies of work. On this ground, reference deserves to be dismissed. Third preliminary objection raised by the company is the contractors are not made party to the reference. Thus it deserves to be dismissed for non-joinder of necessary parties. They further contended that before initiation of present dispute, the contractor had withdrawn these persons and they were engaged by the contractors in other establishments. The union is trying to abolish the contract labour which is not within the jurisdiction of this Tribunal. Thus deserves to be dismissed. According to them, none of these persons under reference has continuously or otherwise worked for 240 days. Hence they have no right to claim any favour. They further contended that the persons under reference are not working on the premises of the undertaking from various dates since the contractor was not able to get work from the company.

5. They denied that union is registered and the workmen under reference are its members. They denied that services of any person concerned in the dispute have been illegally or otherwise terminated by them. The persons concerned were intermittently employed by the contractor and after completion of the contract work, they have been withdrawn by the contractor on various dates. There is no employee-employer relationship between them. They denied that they are engaged in unfair labour practice as has been alleged. The company has become a sick unit for want of work. Hence as per the directions of Central Government, VRS scheme was introduced. They have denied that it was introduced to harass or force any workman to accept VRS scheme. The wages could not be paid in time for want of funds and not with a view to harass anybody. They denied that they have engaged contract labourer for regular work. They denied that M/s. P. Vishal is a bogus contractor. According to them, he is a genuine and bonafide contractor engaged by the company. The persons concerned are the employees of P. Vishal and Company. None of them have worked 240 days continuously with the first party. The persons concerned cannot have any claim of dues or permanency or dues against the company. Company has never appointed these persons. It remains closed on weekly off and on the days of national holidays. Thus contention to that effect are false. According to them none of these workers have done any overtime work. The union is making unjust, unreasonable and illegal demands. Management has not terminated services of these persons without following due process of law as has been alleged as they are employees of contractor who has withdrawn them. The union is always adamant, non-co-operative. Therefore there was no possibility of settlement before RLC (C). The first

party is a sick unit. Therefore reduction of workforce had become necessary. After carefully considering the situation, the Govt. of India had sanctioned VRS Scheme to reduce the workforce. The company therefore prays that the reference deserves to be dismissed. The second party vide their rejoinder Ex-11 denied all the contents in the written statement and made the submissions in respect of the workmen under reference.

6. Following are issues at Ex-12 framed by my Ld Predecessor for my consideration. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings
1.	Whether reference is maintainable as recited in WS Para 1 (a)	No.
2.	Do workers mentioned in enclosed list prove that they are employees of management?	No.
3.	Whether the action of the management of Richardson & Cruddas (1972) Ltd. Mulund Works, Mumbai by not allowing the workers to join their duties is justified?	Yes
4.	What relief the workers are entitled?	No relief.
4a.	Which is the appropriate Govt.?	Central Government

REASONS

Issues Nos. 1 & 2:—

7. Both these issues are in respect of the relationship of employee-employer between second party with the first party. Therefore both these issues are discussed and decided simultaneously. In this respect, I would like to point out that the fact is not disputed that the workers under reference were working on the premises of the first party. According to them, the first party has engaged them and the contract agreement was sham and bogus between the company and the contractor concerned. As against this, according to the first party the workmen under reference were never their employees. They were employees of P. Vishal and Company who was a labour contractor. In this respect the Id Adv. for the first party referred the cross examination of WW-1 at Ex-13. This witness Mr.

Chandrakant Mohite stated in his cross examination that no appointment letter was issued by the first party. He further says in this cross that attendance card was issued by P. Vishal & Co. He further says that contract workers were called at the gate and then they were permitted into the factory premises. He further says in his cross that no identity card was issued. He further says in his cross that workers were removed in batches. He further says that no case was filed by union for abolition of contract labour on the premises of first party. He further says that no terminating letter was issued by the first party while terminating his services. He has not filed any recovery application. He also admitted that they have not filed case to treat them as employee of first party and for the benefit of permanent employees. The Id Adv. also pointed out the reply of WW-2 given in his cross at Ex-32. He says in the very first sentence that he cannot state whether the workers involved in the reference are contract workers or not.

8. On the point Id Adv. for the second party submitted that in some other references this Tribunal has regularized the workers under the respective references and passed the respective awards against the first party. The Id Adv. has produced copy of award in Ref. C.GIT- 2/93 of 1998 wherein action of management not regularizing the workmen under reference was held illegal and not justified and they are declared deemed to be regularized in the service from the date of their juniors were regularised. However in that matter the workmen therein were casual workers of the first party. The casual or temporary workers have a direct relationship of employee with the first party. However in the case at hand, the workers under reference are not casual or temporary workers. On the other hand they are engaged by contractor. In this respect, law is well settled by the Apex Court in Secretary, State of Karnataka & Ors. V/s. Umadevi & Ors 2006 II CLR 261 wherein the Hon'ble Court held that:

"Unless the appointment was in terms of relevant rules, no rights are conferred on the appointee."

In the same judgement, Hon'ble Court also observed that:

"Merely because he is continued beyond his term of appointment does not entitle him to be absorbed in regular service or made permanent."

9. In respect of contract labourer the Hon'ble Apex Court in The workmen of Food Corporation of India V/s. M/s. Food Corporation of India (1985) II LLJ4 observed that:

"Workman employed by contractor cannot be the workman of a third party who engages a contractor."

The Principle laid down in the case of Uma Devi is reiterated by Hon'ble Apex Court in Laxmi Ratan Cotton

Mills Vs State of U.P. & ors 2009 I LLJ 527. In the case at hand the workers under reference were not recruited by the first party by following the recruitment rules.

On the other hand, they were engaged for work through contractor. There is no evidence that the contracts were sham and bogus. Therefore, I come to the conclusion that they are not employees of the first party and are not competent to raise the industrial dispute. Accordingly I decide these issues Nos. 1 and 2 in the negative.

Issue No. 4 (a):—

10. According to the management, State Govt. is the proper Govt. Thus this Tribunal has no jurisdiction to entertain this reference. Thus they pray that, the reference deserves to be rejected. In this respect the Id. Adv. for the second party union argued that the first party is a Central Government undertaking. He further submitted that in the complaint no. 511/1995 filed by the union, the matter was taken to Hon'ble High Court in write petition no. 6458/1995 wherein the Hon'ble High Court held that appropriate Govt. in respect of first party is Central Government. Id. Adv. further submitted that in another Reference No. CGIT-2/93 of 1998, this Tribunal also gave the same finding in respect of the first party company. The said judgement has reached to its finality as no appeal was preferred thereagainst. In this judgement. My Id. Predecessor has referred to the finding of Hon'ble High Court recorded in Write Petition No. 6458/1995. These judgements and findings therein were not further challenged by the first party, wherein it is held that, appropriate Govt. In respect of the first party, is the Central Govt. In the circumstances, averment on behalf of the first party, that appropriate Govt. is the State Govt. is found to be devoid of merit. In the light of the above judgements and findings therein, it needs no more discussion to arrive me at the conclusion that Central Govt. is the appropriate Govt. and it is empowered to make the reference to this Tribunal. Therefore I further hold that this Central Govt. Industrial Tribunal has jurisdiction to entertain this reference. Consequently, I hold that the reference is maintainable. Accordingly I decide this issue no. 4 (a)

Issue Nos. 3 & 4:—

11. In the light of discussion and findings on the issues Nos. 1 & 2 above, it is clear that the workers under reference are not the employees of the first party. On the other hand they are contract labourers. Therefore, they cannot raise industrial dispute. In the circumstances, action of management cannot be called unjustified or illegal in not allowing these workers to join their duties. In this backdrop it needs no more discussion to decide this issue no. 3 in the affirmative. As a result I hold that the workers under reference are not entitled to any relief. Accordingly, I decide this issue no. 4 and proceed to pass the following order.

ORDER

The reference stands rejected with no order as to cost.

Dated: 23.12.2011

K.B. KATAKE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का० आ० 872.—ओद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोलकाता पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 25/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.01.2012 को प्राप्त हुआ था।

[सं० एल-32011/8/2003-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 6th February, 2012

S.O. 872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (4 of 1947) the Central Government hereby publishes the award (Ref. No. 25/2005) of the **Central Government Industrial Tribunal /Labour Court, KOLKATA** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management **KOLKATA PORT TRUST** and their workmen, which was received by the Central Government on 18.01.2012.

[No. L-32011/18/2003-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

AT KOLKATA

Reference No. 25 of 2005

Parties: Employers in relation to the management of

Kolkata Port Trust

AND

Their workmen

Present: Mr. Justice Manik Mohan Sarkar

....Presiding Officer

Appearance:

On behalf of the Management	:	Mr. G. Mukhopadhyay, Industrial Relations Officer.
On behalf of the Workmen	:	President of the workmen union.
State: West Bengal.		Industry: Port & Dock.

Dated 22nd December, 2011.

AWARD

By Order No. L-32011/18/2003-IR(B-II), dated 19.07.2004 the Government of India, Ministry of Labour in exercise of its power under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Kolkata Port Trust in terminating the service of Shri Partha Sarathi Gain w.e.f. 3.9.2003 is just and legal? If not, what relief the concerned workman is entitled?"

2. When the case is called out today, Mr. G. Mukhopadhyay, the authorized representative of the management is present but none is found to be present on behalf of the workmen union.

3. Mr. Mukhopadhyay, authorized representative of the management has submitted that though the matter is fixed for cross-examination of WW-01, Shri Partha Sarathi Gain, neither the authorized representative of the workmen union nor the witness named above is appearing on any date even after service of notice upon the workmen union.

4. On scrutiny of the order sheet it is found that first notice was issued to both the parties on my assumption of office here and A.D. Card specifically from the workmen union has been received back after service and in response thereto the workman side never appeared and thereafter a fresh notice was directed to be issued again on 07.06.2011 and accordingly, fresh notice was issued on 13.06.2011 and in that case also it is found that the A.D. Card of the said notice to the workmen union has been received back with the endorsement of receipt on 24.06.2011 but even then more is appearing on behalf of the workmen union.

5. Such conduct from the side of the workmen union shows that the workmen union is no more interested to proceed with this reference and naturally it is presumed that the industrial dispute raised earlier perhaps is not subsisting now and for that reasons the workmen union is not interested to proceed with this reference.

6. In that case, let the present reference be disposed

of with a "No Dispute Award".

An Award is passed accordingly.

Dated: 22nd December, 2011

Justice

MANIK MOHAN SARKAR,
Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का० आ० 873.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया—
के प्रबंधतंत्र के संबद्ध नियोजकों
और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में
केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट
(संदर्भ संख्या सीजीआईटी/एलसी/आर/128/02) को प्रकाशित करती
है जो केन्द्रीय सरकार को 17.01.2012 को प्राप्त हुआ था।

[सं० एल-12012/96/2002-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 6th February, 2012

S.O..873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (*Ref. No. CGII/LC/R/128/02*) of the **Central Government Industrial Tribunal/Labour Court, Jabalpur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **BANK OF INDIA** and their workman, which was received by the Central Government on **17.01.2012**.

[No. L-12012/96/2002-IR(B-II)]

SHESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/128/02

Presiding Officer: Shri Mohd. Shakir Hasan

Shri Rameshwar Sahu,

S/o Rajjul Sahu,

H.No. 2, Ahir Mohalla,

Mangawara, Bhopal (MP) Workman

Versus

The Zonal Manager,

Bank of India,

Zonal Office, Jail Road,

Arear Hills, Bhopal (MP)

Management

AWARD

Passed on this 6th day of January, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-12012/96/2002-IR(B-II), dated 5-9-2002 has referred the following dispute for adjudication by this tribunal—

"Whether it is a fact that Shri Rameshwar Sahu was engaged to drive the vehicle owned by the management of Bank of India during the period from 1-11-90 to 1-10-2001? If so, whether the management's action to terminate him from service *w.e.f.* 1-10-2001 is legal and justified? If not justified, what relief is the disputant concerned entitled to?"

2. The case of the workman in short is that he was engaged by the management as Driver on 1-11-1990 against the vacant post. He was paid pay and provided dress by the management. It is stated that he was stopped from work from 1-10-2001 in violation of the provision of Industrial Dispute Act, 1947 (in short the Act, 1947). He had been terminated without any notice nor any compensation was paid as provided under Section 25-F of the Act, 1947. It is stated that the junior to him are still continuing in service against the principle of "first come last go". The workman is still unemployed. On these grounds, it is submitted that the workman be reinstated with back wages with costs.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, *inter alia*, is that Shri Rameshwar Sahu is not a workman in terms of Section 2(s) of the Act, 1947. He was never employed by the management and there is no relationship of employer and employee. As such there is no question of termination of service of the so called workman. He was engaged as a Personal servant by the Officers in Scale-V. No slary or allowances were paid by the management Bank to the applicant. The Bank provides vehicle to certain class of offices who are entitled to use the same for their personal purposes but those officers are not provided any Driver. They are entitled to get allowances from time to time for the purpose of petrol and maintenance of the car so also certain allowances for employing personal Driver. The driver so engaged by the officer is not the employee of the bank. The applicant was employed as Driver by the then Lt. Zonal Managers namely Shri M.S. Rawat and Shri S.K. Bandopadhyay in their personal capacity. It is stated that the claim of Shri Rameshwar Sahu

is misleading. It is submitted that the applicant/workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are for adjudication—

- I. Whether Shri Rameshwar Sahu was engaged to drive vehicle owned by the management Bank during the period from 1-11-90 to 1-10-2001?
- II. If so, whether the action of the management in terminating him from service w.e.f. 1-10-2001 is legal and justified?
- III. To what relief the workman is entitled?

5. After filing the statement of claim, the workman became absent. The workman failed to file his evidence. Lastly the reference proceeded ex-parte against the workman on 31-1-2011.

6. Issue Nos. I & II

According to the management, Shri Rameshwar Sahu was not employee of the bank rather he was personal Driver of the officers of the Bank who was entitled to engage his Personal Driver of the car given to the officers by the Bank. In support of the case, the management has examined one witness. The management's witness Shri Jay Parkash Bansal if presently working as Senior Manager at Zonal Office, Bhopal. He was supported the case of the management. He has stated that the applicant was never employed by the management of the Bank. He was employed by the then Lt. Zonal Manager namely Shri M.S. Rawat and Shri S.K. Bandopadyaya in their personal capacity to drive their car. This clearly shows that he was not employee of the Bank and therefore the question of termination by the Bank does not arise. There is no other evidence to impeach the credit of this witness. There is no reason to disbelieve his evidence. Both the issues are decided against the workman and in favour of the management.

7. Issue No. III—

On the basis of the discussion made above, it is clear that the applicant is not entitled to any relief. Accordingly the reference is answered.

8. In the result, the award is passed without any order to costs.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2012

का० आ० 874.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया—के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 21/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.12.2012 को प्राप्त हुआ था।

[सं० एल-12011/132/2008-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 6th February, 2012

S.O. 874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (**Ref. No. 21/2009**) of the **Central Government Industrial Tribunal/Labour Court, KANPUR** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **CENTRAL BANK OF INDIA** and their workman, which was received by the Central Government on **19.12.2011**.

[No. L-12011/132/2008-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PRAKASH, HJS, PRESIDING OFFICER,

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

INDUSTRIAL DISPUTE NO. 21 OF 2009

State President ,

Central Bank Employees Association,

U.P. 958 Kalyani Devi,

Allahabad.

AND

Regional Manager,

Central Bank of India,

Regional Office,

Lanka,

Varanasi.

AWARD

1. Central Government, MoI, New Delhi *vide* notification L-12011/132/2008/IR(B-II), dated 24.02.09 has reference the following dispute for adjudication to this tribunal.
2. Whether the action of the management Central Bank Employees Association, Allahabad that Sri AN

Upadhy Ex. Employee of Central Bank of India has not been paid interest over the Provident Fund for the year 1995-96 and 1997 by the management of Central Bank of India is just fair and legal? If not what relief the workman is entitled?

3. In the instant case after the exchange of pleadings between the parties several dates were granted to the union to adduce the evidence in support of their case. But after availing of repeated opportunity, neither the union nor the workman ever presented before the tribunal to prosecute their case nor adduced any evidence. It therefore, appears that the neither the union nor the workman is interested to prosecute their case.
4. Therefore, the tribunal is constraint to believe that the union has palpably failed to prove their case by adducing cogent and reliable evidence in support of their case before the Tribunal. As such in view what has been stated hereinabove, the tribunal is bound to answer the award against the union for want of evidence and proof.
5. Reference is therefore, answered accordingly against the union and in favour of management.

Dt. 12.10.11 RAM PRAKASH, Presiding Officer

नई दिल्ली, 7 फरवरी, 2012

का० आ० 875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक——के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 26/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-01-2012 को प्राप्त हुआ था।

[सं० एल-12012/25/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 7th February, 2012

S.O. 875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (**Ref. No. 26/2010**) of the **Central Government Industrial Tribunal/Labour Court, CHENNAI** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **INDIAN BANK** and their workman, which was received by the Central Government on **13.01.2012**.

[No. L-12012/25/2010-IR(B-II)]

SHESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday, the 11th January, 2012

Present : A.N. JANARDANAN
Presiding Officer

INDUSTRIAL DISPUTE No. 26/2010

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workman]

BETWEEN

The General Secretary : 1st Party/Petitioner Union
Indian Bank Employees Association
17, Ameerjan Street, Choolaimedu
Chennai-600094

Vs.

The General Manager (HR) : 2nd Party/Respondent
Indian Bank, 66, Rajaji Salai
Chennai-600001

APPEARANCE:

For the 1st Party/	:	Sri G. Gopal, General Petitioner Union Secretary, Authorized Representative
For the 2nd Party/	:	M/s T.S. Gopalan & Co., Management Advocates

AWARD

The Central Government, Ministry of Labour *vide* its Order No. L-12012/25/2010-IR (B-II), dated 02.06.2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of the Indian Bank, Chennai in imposing punishment of lowering down of three stages of increment with cumulative effect in violation of Bipartite Settlement to Shri

P.K. Govindarajan, Agricultural Assistant, is justified? What relief concerned workman is entitled?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 26/2010 and issued notices to both sides. Petitioner through authorized Representative and Respondent through Advocate and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The Claim Statement contentions briefly read as follows:

Sri P.K. Govindarajan whose punishment of reduction of 3 increments under Clause-VI(e) of Bipartite Settlement against the provisions is espoused by the Union was charge sheeted on 04.05.2005 for an alleged incident said to have taken place in Chengam Branch on 17.07.2003 subsequent to reply to a Show Cause Noticed dated 16.12.2003 which is not found satisfactory. The charges are:

Charge No. 1

He and his wife Smt. Kalavani arriving at the Chengam Branch on 17.07.2003 insisted for the home loan of Rs. 4,00,000/- in her name to be released immediately to which the Branch Manager Sri T.S. Raman being under the orders of transfer to Vellore Main informed that incoming Manager would attend.

Charge No. 2

He abused T.S. Raman using un-parliamentary words as follows "Yowh can you give the loan or not? What do you think of yourself in mind? What is the problem with you when Head Office has sanctioned the loan? Since you are not getting any bribe out of this loan, you are not releasing the loan. Does this Bank belong to your father? (Truly translated from Tamil) thus conducting himself in riotous or disorderly or indecent behaviour under 5(C) of 10.04.2002 settlement.

Charge No. 3

He abused the Bank and all employees in the banking hall using un-parliamentary words as follows "In this bank everybody is a thief. There should be a board with a caption "Beware of Thieves" is to be written and kept in the branch. In this bank all the upper castes would get everything. Lower castes persons will not get anything. What option is left than to beat him with chappals when loan cannot be given" (Truly translated from Tamil) thus spoiling the image of the bank behaving in the above manner and doing act prejudicial to the interests of the bank under 5(I)

Charge No. 4

He told his wife as follows "If you had given him the bride by placing in a cover and given him underneath he would have given loan. If asked directly how will be take" (Truly translated from Tamil) thus behaving in disorderly manner and also instigated her to offer bribe to get the loan against 5(C) and instigated others to act prejudicially to the interests of the bank 5(i).

Charge No. 5

His wife Smt. Kalavani absued the Branch Manager uttering the following words "Take your bribe and give the balance. We will see you in the village. Your wife will become widow and your wife and children will die in an accident" thus amounting to abetment or instigation of his wife to do the above acts under 5(i). An enquiry was held and a report was drawn on 15.09.2006 holding the charges proved against evidence and outcome of innocence in the enquiry. Punishment was imposed on 25.10.2007 by bringing down to the lower stage in the scale of pay by one stage without cumulative effect for a period of one year for Charge No. 2 and the same with cumulative effect each for Charge No. 3 and Charge No. 4 under Clause 6(e) and censure for Charge No. 5. Aggregate punishment imposed is reduction of 3 stages in the scale of pay in violation of settlement which could be under Clause 6(e) "Be brought down to lower stage in the scale of pay upto a maximum of two stages". ID was raised on the failure of which the reference is occasioned. The workman P.K. Govindarajan was Agricultural Assistant in Melarani Branch. His wife Mrs. Kalavani, a P.G. Teacher was sanctioned a housing loan by Indian Bank, Circle Office, Vellore to avail the same at Chengam Branch, Branch Manager refused the loan on the ground that back papers were not available and that he was under orders of transfer. The workman offered to submit the copies of the back papers which were refused. He has in fact sanctioned other loans but was refusing loans sanctioned by his higher authorities. The same Branch Manager had victimized Govindarajan while in Chengam Branch by a false complaint. They only pleaded with him for release of loan and did not do anything wrong. Charge Sheet was after 22 months of the alleged incident. The Management harassed him for a period of 4 years with a perverse intention. There was no customer or any other witness examined who did not say any incident as alleged to have taken place. Only staff who toed the line of the Branch Manager were produced as witnesses. Enquiry was not free and fair. Findings are biased. The manner in which the alleged incident was presented in the Charge Sheet makes it clear that the incident was projected as different incidents to give maximum punishment as against the provision that more than one punishment should not be imposed for one charge with a motive to victimize the member. Punishment is in violation of natural justice and Bipartite Settlements i.e. 6(e). The same is to be quashed and the arrears paid to him.

4. Counter Statement allegations briefly read as follows:

The Branch Manager T.S. Raman was under orders of transfer and the new Manager Sri R. Rajendran had already taken charge in January 2000. However T.S. Raman continued to work in Chengam as he was yet to take charge at the transferee branch. On 17.07.2003 Sri Rajendran had gone to Tiruvannamalai for SGSY training and Mr. Raman was In-charge. The workman came without intimation or the sanctioned ticket or the relevant papers. Raman informed his inability to release the loan. The workman started shouting. Assistant Manager also gave a report of misbehavior by the workman on 17.07.2003. There was investigation by Mr. S. Bhagyanathan. In the enquiry five witnesses were examined for the Management and two witnesses for the workman. Copy of report holding charges proved was given to which workman submitted comments. On 25.10.2007 the punishments were imposed for Charges 2 to 5 with no punishment for Charge No. 1. Punishment is justified. His records show that he was prone to defiant, high-handed misbehavior. He was earlier found guilty of misbehavior. The case is not one falling under the scope of Section-11A to interfere except where it is perverse. Finding is based on adequate evidence. No case has been made out for interference. Punishment is only to be upheld.

5. Rejoinder Statement averments in a nutshell are as follows:

Charge is not proved and the punishment is unjustified. Enquiry Officer with prejudiced mind concluded the charges as proved perversely. It is a fit case for intervention and the punishments are to be quashed.

6. Points for consideration are:

- (i) Whether the punishments imposed are justified
- (ii) To what relief the petitioner is entitled?

7. Evidence consists of Ex.W1 to Ex.W9 on the petitioner's side and Ex.M1 to Ex.M16 on the Respondent's side, all marked on consent with no oral evidence adduced on either side.

Points to (i) and (ii)

8. Heard both sides. Perused records, documents and written arguments on behalf of the petitioner. Both sides argued keenly in terms of the respective pleadings. Petitioner focused his contention that if the incident had been considered as gross misconduct by the Management then it could at the worst be classified under 5(C) riotous or disorderly behaviour on the premises and not under any other clauses which is only to circumvent the maximum punishment clause of reduction of increments by two stages by breaking the incident into three or four separate incidents and framed separate charges to bypass the rule that one charge attracts one punishment. The charges itself expose the perverse nature. Punishments violate the letter and spirit of Bipartite Settlements governing service condition. It is further argued that the workman was confronted with perverse attitude of Management as Dalit. His wife, a P.G. Teacher went to the Bank after taking the leave to receive the loan. She went to the extent of weeping.

9. The contra arguments of the Respondent are that the reference being punishment in violation of Bipartite Settlement is justified is not regarding its gravity. The question to be answered is only regarding alleged violation. Section-11A of the ID is not applicable to re-appreciate the matter. There is no evidence of victimization. Propriety of punishment cannot be gone into. There is no violation of settlement. There is no re-writing of the provision done by the Management. Punishment is only lenient, which punishment in fact does not fall for consideration as Section-11A is not attracted.

10. The Respondent relied on the decision of the High Court of Madras in THE ZONAL MANAGER, BANK OF INDIA, CHENNAI VS. THE GENERAL SECRETARY, BANK OF INDIA STAFF UNION. CHENNAI AND ANOTHER (2011-1-LLJ-529) in which Hon'ble High Court of Madras held "In the present case, the question of invoking power under Section 11-A of the Act to go into

the proportionality of the punishment did not arise. The CGIT had not kept in its mind the jurisdiction imposed on it. It is not as if the punishment imposed is so shockingly disproportionate, that no reasonable person would have imposed such punishment. On the other hand, the petitioner Bank itself had imposed only a minor penalty on misconducts which were proved in a full-fledged enquiry supported by legal evidence. Therefore, the attempt by the CGIT to interfere with the penalty is unwarranted". In another decision in MANAGEMENT OF KAVARAKKAL ESTATE VS. PRESIDING OFFICER, LABOUR COURT (2002-1-LLJ-217) Hon'ble High Court of Madras held "It is true apart from Section-11A, the Labour court has powers as well to interfere as has been held by the Apex Court in Firestone Case (supra). However, in the absence of any victimization or unfair labour practice or discrimination or malicious or arbitrary exercise of power, the Labour Court has no jurisdiction to interfere *de hors* Section-11A of the Industrial Disputes Act". Section-6(e) provides to punishment of bringing down to lower stage in the scale of pay upto maximum of two stages. This provision discernibly is for a single charge and for more charges than one the Section 06(e) is applicable. There is no violation of the Bipartite Settlement. There is no scope for interference with the given punishment on invocation of Section-11A to in the absence of any other vitiating circumstances as mentioned in the above decision. It is also to be remembered that arguments without evidence or pleadings or with pleadings, but without evidence have no legal stand. The punishments are only to be upheld and I do so.

11. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 11th January, 2012).

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner :	None
For the 2nd Party/Management :	None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ex.W1	04.05.2005	Letter CO/VLR/VIG/F274/51/2005 from Circle Office, Vellore framing charges against Sri P.K. Govindarajan
Ex.W2	06.07.2005	Reply from Sri P.K. Govindarajan to the above referred letter
Ex.W3	10.08.2005	Letter CO/VLR/VIG/F274/207/2005 from Circle Office, Vellore fixing date for enquiry
Ex.W4	26.07.2007	Letter CO/VLR/VIG/F274/127/2007 from circle office, Vellore proposing punishment to our member Sri P.K. Govindarajan
Ex.W5	16.08.2007	Our member Sri P.K. Govindarajan reply to the above letter dated 26.07.2007
Ex.W6	25.10.2007	Letter CO/VLR/VIG/F274/259/2007 from Disciplinary Authority imposing punishment on our member Sri P.K. Govindarajan
Ex.W7	05.12.2007	Letter from Sri P.K. Govindarajan to the Appellate Authority against the punishment
Ex.W8	12.12.2007	Letter IBEA/GEN/196/2005-08 from the union to Assistant Commissioner of Labour (Central) Chennai raising Industrial Dispute
Ex.W9	28.05.2008	Orders of Appellate Authority.

On the Management's side

Ex.No.	Date	Designation
Ex. M1	12.07.2003	Complaint of Manager—Chengam to

Ex. M2	22.07.2003	C.O. Vellore against P.K. Govindarajan Report of M/s Devaraj—S. Nallaraj, E. Mahendran, N. Ramasamy, Indian Bank, Chengam—to C.O. Vellore	NO. CGIT/LC/339/99 Presiding Officer: Shri Mohd. Shakir Hasan Shri Padam Singh Malviya, R/o Makshi, Tehsil Shajapur, Shajapur (Distt.)
Ex. M3	12.12.2003	Investigation report of S. Bagyanathan, Manager, C.O. Vellore	Workman
Ex. M4	09.11.2005 09.12.2005) 16.12.2005) 05.01.2006) 12.01.2006) 06.02.2006)	Enquiry Proceedings	Management
Ex. M5	17.02.2003	Sanction ticket (CO/VLR/CRE/161/2003)	
Ex. M6	22.07.2003	Letter from Indian Bank, Chengam Branch to C.O. Vellore	
Ex. M7	28.04.2006	Letter from M. Chandrasekaran, Presenting Officer enclosing his summing up	
Ex. M8	10.07.2006	Defence summing up by S. Hari Rao, D/R	
Ex. M9	15.09.2006	Findings of Enquiry Officer	
Ex. M10	12.10.2006	Remarks of P.K. Govindarajan on the findings of the Enquiry Officer	
Ex. M11	18.08.2007	Proceedings of personal hearing	
Ex. M12	22.06.2010	Award of the Central Govt. Industrial Tribunal-cum-Labour Court, Chennai in ID No. 4 of 2009 in respect of Sri P.K. Govindarajan	
Ex. M13	10.04.2002	Settlement—between Banks and Employees Associations	
Ex. M14	26.12.2007	Respondent's reply to Assistant Commissioner of Labour (Central)	
Ex. M15	02.06.2005	Extract—8th Bipartite Settlement with CL 4 Scales of Pay and CL 5 Stagnation Increments	
Ex. M16	24.03.2011	Letter from Respondent H.O. Chennai to Branch Manager, Tiruvannamalai regarding grant of stagnation increment and restoration of Basic Pay after punishment period of one year to P.K. Govindarajan	

नई दिल्ली, 7 फरवरी, 2012

का० आ० 876.—ऑड्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मैनेजर, डिपार्टमेंट ऑफ टेलीकाम प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑड्योगिक विवाद में केन्द्रीय सरकार औड्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या—सी.जी.आई.टी./एल.सी./आर/339/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-02-2012 को प्राप्त हुआ था।

[फा. सं० एल-40012/276/1999 आई.आर (डी.यू.)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 7th February,

S.O. 876.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT/LC/R/339/1999**) of the Central Government Industrial Tribunal cum Labour Court, JABALPUR as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of **Chief General Manager, Deptt. Of Telecom** and their workman, which was received by the Central Government on **07.02.2012**.

[F.No. L-40012/276/1999-IR(DU)]
Ramesh Singh, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

AWARD

Passed on this 13th day of January, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-40012/276/99/IR(DU) dated 19-11-99 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of Chief General Manager, Telecom in terminating the services of Sri Padam Singh Malviya S/o Madhaosinh Malviya w.e.f. 31-3-99 is legal and justified? If not, to what relief the workman is entitled?"

2. The case of the workman, in short, is that the workman was appointed on casual basis under Sub-Divisional Engineer, Telecom Shajapur and was working continuously from January, 1991 and was terminated without any notice and without payment of any compensation on 31-3-99 in violation of Section 25-F of the Industrial Disputes Act, 1947 (in short the act, 1947). It is stated that the Hon'ble Supreme court in a case of Bhartia Daktar Mazdoor Sangh directed the management for regularization to the casual daily wagers. In view of the direction the management formulated a scheme for regularization to those casual labours who were engaged prior to 30-3-1985. It is stated that the Hon'ble Central Administrative Tribunal, Delhi in an O.A. Case No. 1476/90 declared the cut off date as arbitrary and illegal and directed to regularize all casual employee working with the management. It is submitted that the workman be reinstated and be directed to make permanent.

3. The management appeared and filed Written Statement. The case of the management, *inter alia*, is that the applicant/workman has never worked in this division of the management and he was never appointed as Labour since January, 1991. As such the question of termination for the services and regularization in the services of the management do not arise. It is stated that the question of the violation of the provision of Section 25-F of the Act, 1947 does not arise. On these grounds, it is submitted that the reference be answered in favour of the management.

4. The workman appeared in the case and filed Statement of claim, thereafter the workman became absent. Lastly the reference proceeded ex parte on 18-5-2010 against the workman.

5. On the basis of the pleadings, the following issues are framed for adjudication—

I. Whether the action of the management in terminating the services of Shri Padam Singh Malviya w.e.f. 31-3-99 is legal and justified?

II. To what relief the workman is entitled?

6. Issue No. I

The Management has examined one witness in the case. The management witness Shri Bhagchand Joshi is Sub Divisional Engineer of T.D.M. Shajapur. He has stated that the workman was never engaged by the Management and the claim of the workman for regularization is baseless. His evidence is unrebutted. There is no reason to disbelieve his evidence. His evidence clearly shows that there is no question of terminating the services of Shri Padam Singh Malviya. This issue is decided against the workman and in favour of the management.

7. Issue No. II

On the basis of the discussion made above, the workman is not entitled to any relief. The reference is accordingly answered.

8. In the result, the award is passed without any order to costs.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

Mohd, Shakir Hasan, Presiding Officer.

नई दिल्ली, 13 फरवरी, 2012

का०आ० 877.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट मास्टर, हेड पोस्ट ऑफिस एण्ड अदर्स प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण बीकानेर के पंचाट (संदर्भ संख्या-06/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-02-2012 को प्राप्त हुआ था।

[फा. सं० एल-40012/108/1993 आई.आर (डी.यू.)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 7th February,

S.O. 877.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT/LC/R/334/1999**) of the Central Government Industrial Tribunal cum Labour Court, JABALPUR as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of **Chief General Manager, Deptt. Of Telecommunication, Bhopal and their workman**, which was received by the Central Government on **07.02.2012**.

[F.No. L-40012/281/1999-IR(DU)]

Ramesh Singh, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR-COURT, JABALPUR

NO. CGIT/LC/R/334/99

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Ramprasad Bilala,
S/o Shri Shrivsingh Bilala,
Village Balodi,
Tehsil Saharanpur,
Distt. Raigarh

Workman

Versus

Chief General Manager,
Dept. of Telecommunication,
Hoshangabad Road,
MP Circle,
Bhopal (MP)

Management

AWARD

Passed on this 19th day of January, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-40012/281/99/IR(DU) dated 19-11-99 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of Chief General Manager, Telecom and their workman Shri Ramprasad Bilala S/o Shrivsingh Bilala *w.e.f.* 26-3-99 is justified? If not, to what relief the workman is entitled?"

2. The workman did not appear inspite of proper notice. Lastly the reference proceeded *ex parte* against the workman on 23-11-2009.

3. The management appeared and filed Written Statement. The case of the management in short is that the alleged workman was never appointed by the management and was never engaged in the division. Hence the termination of service and the provision of Section 25-F of the Industrial Dispute Act (in short the Act) does not arise. He had never worked for 240 days in any calendar year. It is submitted that the reference be decided in favour of the management.

4. The following issues are framed for adjudication—

I. whether action of the management in terminating the services of Shri Ramprasad Bilala *w.e.f.* 26.3.99 is justified?

II. To what relief the workman is entitled?

5. Issue No. I

The Management has examined Shri Bhagchand Joshi, Telecom Divisional Manager, Shahapur. He has stated that the workman was never engaged by the Management. His evidence is unrebutted. There is no reason to disbelieve his evidence. It is clear that there is no case of the workman. This issue is decided in favour of the management and against the workman.

6. Issue No. II

On the basis of the discussion made above, the workman is not entitled to any relief. The reference is accordingly answered.

7. In the result, the award is passed without any order to costs.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 7 फरवरी, 2012

का०आ० 878.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिवीजनल इन्जीनियर (प्रशासन) ऑफिस ऑफ डिस्ट्रीट मैनेजर, इटारसी प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या-सी०जी०आई०टी०/एल०सी०आर०144/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-02-2012 को प्राप्त हुआ था।

[फा. सं० एल-40012/8/1998 आई.आर (डी.यू.)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 7th February,

S.O. 878.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT/LC/R/144/1998**) of the Central Government Industrial Tribunal cum Labour Court, **JABALPUR** as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of **Divisional Engineer (Admn.), Office of the Distt. Manager, Itarsi and their workman**, which was received by the Central Government on **07.02.2012**.

[F.No. L-40012/8/1998-IR(DU)]

Ramesh Singh, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/144/98

Presiding Officer: SHRI MOHD. SHAKIR HASAN

Shri Balkrishna Moreshwar Joshi,
Shivaji Ward, Ganesh Chowk,
Harda, Hoshangabad

Workman

Versus

Divisional Engineer (Admn.),
Office of the Telecom District Manager,
Itarsi

Management

AWARD

Passed on this 17th day of January, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No.L-40012/8/98IR(DU) dated 20-7-98 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of Divisional Engineer (Admn.), Telecom District Manager, Itarsi in terminating the services of Shri Balkrishna Moreshwar Joshi *w.e.f.* 4/10/96 is legal and justified?

If not, to what relief the workman is entitled for?"

2. The case of the workman, in short, is that he was appointed by the Divisional Engineer, Telecom, Khandwa as waterman in August, 1981. he was paid monthly salary by money order. It is stated that the workman requested the Divisional Engineer for doing him permanent, then his pay was fixed *vide* letter No. E-32/87-88/34 dated 17.7.87 and again it was revised *vide* letter No. E-32/92-93/102/ Khandwa dated 11-9-92 and payment was made accordingly. It is stated that he worked continuously for eleven years. In the meantime, he had requested several times to make him permanent when the division of the Divisional Engineer was changed to Itarsi, he worked there for four years under District Manager, Telecom, Itarsi. It is stated that he was all of a sudden terminated from service on 4-10-96 *vide* letter No. E-4/96-97/29 Harda dated 4-10-96 though other workers are still working in violation of the provision of Industrial Dispute Act, 1947. It is submitted that the termination letter be set aside and the workman be reinstated with back wages.

3. The management appeared and filed reply by way of Written Statement. The case of the management, *inter alia*, is that the workman was engaged on part time basis and it doesnot come under the purview of the Industrial Dispute. He was not served with appointment letter nor be was a regular labour. Admittedly he was paid wages through money order. It is stated that the wages of part time labours were revised time to time and the wages of the workman were also revised accordingly. It is stated that he was not entitled to be regularized and the reference is fit to be dismissed.

4. On the basis of the pleadings of the parties, the following issues are famed—

I. Whether the action of the management in terminating the services of Shri Balkrishna Moreshwar Joshi *w.e.f.* 4-10-96 is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. I-

It is not out of place to say that it is not a case of regularization rather it is a case of termination. To prove the case, the workman has adduced oral and documentary evidence. The workman Shri Balkrishna Moreshwar Joshi has stated that he was appointed as a waterman by the Divisional Engineer in the year 1982. He got wages of the days he worked and had worked continuously. His evidence shows that he worked continuolusly from the year 1982. The workman has filed documentary evidence to prove his case which appear to have been admitted by the management.

6. Exhibit W/1 is the reply given by the management to the Assistant Labour Commissioner(C), Shahjahanabad.

The management has admitted this document. This is filed to show that the workman was engaged on work for four hours on the wages of Rs. 375/- and D.A vide letter No. E-32/92-93/102 dated 7-9-92. This letter is filed by the workman. This clearly shows that he was engaged continuously on part time for 4 hours and there was no regular appointment. Exhibit W/2 is the photocopy of the order of Telecom District Engineer. This document is also admitted by the management. It shows that the workman demanded bonus of his services done yearly but it was rejected as he did not come under the purview of bonus orders. However it is filed to show that he was continuously working on part time basis.

7. Exhibit W/3 is photocopies of money order slips. It is an admitted fact that the wages were paid to the workman by money orders. These slips are also admitted by the management. These slips are filed to show that the wages were being paid by money order from the year 1986 on monthly basis and he was engaged continuously. There is no pleading of the management that the workman was not employed continuously rather the only case of the management is that he was engaged on part time basis which appears to be admitted by the workman on filing these documents. These payment slips of the money order also go to show that the workman was continuously employed.

8. Exhibit W/4 is the photocopy of sanction order of the Telephone Divisional Engineer whereby the wages of part time waterman Harda, Shri Balkishna Joshi was revised. This document is also admitted by the management. It is filed to show that on 7.9.92 his pay was fixed on the basis of 4 hours to the extent of Rs. 375/- per month with DA on admissible rates. This document also goes to show that he was employed on part time basis continuously on monthly half pay since he was working 4 hours out of 8 hours daily. Exhibit W/5 is also photocopy of the chart of revised pay fixation of number of workers. The name of the workman stands on Serial No.11 This document is also admitted by the management. It is filed to show that his pay was revised by the Divisional Engineer, Khandwa w.e.f. 5.2.86. His earlier pay was Rs. 129 per month which was revised and fixed @ Rs. 141 per month with D.A. admissible time to time. This is filed to show that he was in service from before on the pay of Rs. 129 per month as the case of the workman that he was engaged from the year 1981. This is also filed to show that he was engaged continuously on part time basis. Exhibit W/6 is photocopy of termination letter dated 4-10-96. This is also admitted by the management. This is filed to show that without any reason he was terminated from the services. This shows that he was in continuous service from the year 1981 till his termination on 4-10-1996. Exhibit W/7 is the photocopy of the letter of Asstt. General Manager dated 30-8-97 whereby the request for regularization of the workman was rejected.

9. On the other hand the management has only examined oral evidence. The management witness Shri B.S. Kushwaha is working as Divisional Engineer, Hoshangabad. He has denied that the workman was in continuous service as a part time mazdoor (waterman) between August 1981 to 4-10-1996 and he had rendered 240 days in a year prior to his discontinuation. His evidence is not supported by any documentary evidence nor there is any pleading whereas the documents filed by the workman which are also admitted by the management go to show that he was in continuous services on monthly wages with D.A. admissible time to time. As such his wages were revised time to time and lastly termination letter was issued. The management witness Shri Kushwaha has stated that he had not seen any document and only on that presumption he has stated that since he had not worked for 240 days. This shows that he is not reliable to say that the workman had not worked continuously from 1981 to 4-10-1996 and he had not worked 240 days in a calendar year.

10. The management has contended that he was part time worker and as such it does not come under the purview of Industrial Dispute. Industrial Dispute is defined in Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act, 1947) which runs as follows—

"Section 2 K:

"industrial dispute" means and dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

Workman is defined in Section 2(S) of the Act which runs as follows:-

Section 2(S):—

"workman" means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or

- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

This is clear that any person employed in the industry for manual work is a workman. This shows that part time employee also comes under the definition of the workman under the provision of the Act, 1947. Thus the dispute between the management and this workman also comes under the definition of Industrial Dispute. Considering the entire discussion made above, it is clear that the workman Shri Balkrishna Joshi was continuously working from the year 1981 to 4-10-1996 and the management has failed to show that any notice or compensation was paid before or after termination. He was admittedly terminated vide letter No. E-4/96-97/29-Harda dated 4-10-96 and letter shows that no notice and no payment of any compensation as provided under Section 25-F of the Act, 1947 was done. This is evident that the management was not justified in terminating his service without complying the provision of Section 25-F of the Act, 1947. Accordingly this issue is decided in favour of the workman and against the management.

11. Issue No. II

It is now evident that the management is not justified in terminating his service. As such the management is directed to reinstate the workman Shri Balkrishna Joshi with back wages. The reference is thus, answered.

12. In the result, the award is passed without any order to costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

Mohd. Shakir Hasan, Presiding Officer

नई दिल्ली, 7 फरवरी, 2012

का०आ० 879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दी जरनल मैनेजर, इण्डिया गर्वनमेन्ट मिन्ट प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 12/

2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-02-2012 को प्राप्त हुआ था

[सफा. सं० एल-16011/6/2007 आई. आर. (डी यू II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 7th February, 2012

S.O. 879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 12/2008**) of the Central Government Industrial Tribunal cum Labour Court **Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of **The General Manager, India Govt. Mint, their workman**, which was received by the Central Government on 07.02.2012

[F.No. L-16011/6/2007-IR(DU)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur,
Presiding Officer

Dated the 16th day of December, 2011

INDUSTRIAL DISPUTE NO. 12/2008

Between

The General Manager,
India Government Mint,
Industrial Disputes Act, 1947, Phase-II,
Cherlapally (Respondent District)
Hyderabad-500 051.

Petitioners

AND

1. The working President,
Tankasala Karmika Sangh (INTUC)
C/o India Government Mint,
Cherlapally-500 051.
2. The General Secretary,
Hyderabad Mint employees Union (AITUC),
C/o India Government Mint,
Cherlapally-500 051.
3. The General Secretary,
Bharatiya Mint Mazdoor Sangh,

1-8-565/5, RTC X Roads,
Hyderabad-500 020.

Respondents

Appearances:

For the Petitioner: M/s Dr. P.B. Vijaya Kumar & A.V.S. Laxmi, Advocates for R1 & R3

For the Respondent: M/s Raveender Reddy & M. Mallikarjun, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-16011/6/2007-IR(DU) dated 30.4.2008 referred the following dispute between the management of India Government Mint and their workmen under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The term of reference is as under:

SCHEDULE

"Whether the demand of the workmen of the India Govt. Mint, Hyderabad, for appropriate payment of incentives to them on the basis of higher targets of production achieved, if any, during the period between 20.11.2006 to 18.7.2007 is legal and justified? If yes, to what relief the workmen are entitled to?"

The reference is numbered in this tribunal as I.D. 12/2008 and notices were issued to the parties concerned.

2. Petitioners called absent for several adjournments. Petitioners sought time for filing claim statement and documents, but, even after two years of receipt of reference Petitioners did not file claim statement. On 16.12.2011 also Petitioners called absent. Respondent's counsel present. In absence of Petitioners or their claim statement reference is to be answered in negative, hence, the Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowari, Personal Assistance transcribed by her, corrected by me on this the 16th day of December, 2011.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner Witnesses examined for the Respondent

NIL NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 फरवरी, 2012

का०आ० 880.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजमेंट आफ बोल डैम पावर प्रोजेक्ट एण्ड अदर्स प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या-127/2 KII) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-02-2012 प्राप्त हुआ था।

[फा० सं० 42012/241/2010 आई०आर० (डी०य०)]
रमेश सिंह, डेस्क अधिकारी

New Delhi the 7th February, 2012

S.O. 880.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 127/2K11) of the Central Government Industrial Tribunal cum Labour Court No. I Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of KOI Dam Hydro Electric Power Project & Others and their workman, which was received by the Central Government on 07.02.2012.

[F.No. L-42012/241/2010-IR(DU)

Ramesh Singh, Desk Officer.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer.

Case No. ID No. 127/2011

Registered on 28.4.2011.

Sh. Sunil Kumar, S/o Sh. Ram Lal, Village Chamayol, PO Harnoda, Tehsil Sadar, Bilaspur.

Applicant

Versus

1. The Managing Director, M/s AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla.
2. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi.

Respondents

Appearances

For the workman — None

For the Management — Sh. Shamsher Singh for respondent No. 2

AWARD

Passed on 18 Jan, 2012

The Central Government vide Notification No. L-42012/241/2010 (IR(DU)) dated 28.3.2011 by exercising its

power under Section 10 Sub-Section 1 Clause (d) and Sub-Section (2A) of the Industrial Disputes Act 1947 (in short Act) has referred the following disputes for adjudication to this Tribunal.

"Whether the action of the management of M/s AKS Engineers and Contractors a contractor of NTPC Koldam Hydroelectric Power Project, Bilaspur in terminating the services of their workman Sh. Sunil Kumar S/o Sh. Ram Lal w.e.f. 20.4.2007 for his alleged act of habitual absenteeism is legal and justified? What relief the workman is entitled to?"

After receiving the reference notices were issued to the parties. Only respondent No. 2 put in its appearance. Claimant and respondent No. 1 failed to appear despite notices sent by registered post to them on 4.10.2011. Notices not received back undelivered hence, service was presumed on them. As the workman did not turn up and file claim statement despite sufficient service of notice hence, a 'No Dispute' award is passed in the case. Let two copies of the award be sent to Central Government for further necessary action.

Ashok Kumar Rastogi, Presiding Officer

नई दिल्ली, 7 फरवरी, 2012

का०आ० 881.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 27/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-01-2012 को प्राप्त हुआ था।

[सं० एल-12012/21/2010 आई०आर० (बी० II)]

शीश राम, अनुभाग अधिकारी

New Delhi the 7th February, 2012

S.O. 881.—in pursuance of Section 17 of the Industrial Dispute Act, 1947, the Central Government hereby publishes the award (Ref. No. 27/2010) of the Central Government Industrial Tribunal/Labour Court, CHENNAI now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of INDIAN BANK and their workman, which was received by the Central Government on 10.01.2012.

[No. L-12012/21/2010-IR(B-II)]

Sheesh Ram, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Thursday, the 5th January, 2012

Present:

A.N. JANARDANAN.
Presiding Officer

INDUSTRIAL DISPUTE NO. 27/2010

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their Workman)

Between

The General Secretary : 1st Party/Petitioner Union

Indian Bank Employees Association
No. 17, Ameerjan Street
Choolaimedu
Chennai-600094

Vs.

The General Manager/HR : 2nd Party/Respondent
Indian Bank
66, Rajaji Salai
Chennai-600001

Appearance:

For the 1st Party/ : Sri G. Gopal, General Secretary,
Petitioner Union Authorised Representative

For the 2nd Party/ : M/s T.S. Gopalan & Co.,
Management Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12012/21/2010-IR (B-II) dated 03.06.2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"whether the action of the demand of the Union in reduction of punishment of "Dismissal from Service" to "Compulsory Retirement" to Sri T. Sundaramurthy, Clerk/Shroff, SR No. 18447 is legal and justified? What relief the concerned workman entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 27/2010 and issued notices to both sides. First Party entered appearance through Authorized Representative and the Second Party through counsel and filed their Claim, Counter and Rejoinder Statements as the case may be.

3. The Claim Statement averments bereft of unnecessary details are as follows:

Sri T. Sundaramurthy, Clerk-cum-Shroff was charge sheeted for the following charges (i) as cashier (node TSU 013) on 04.08.2004 at Kokathur Branch he receiving Rs. 7,000/- from the remitter of SB A/c11964 Smt. A. Sumathy

released signed counterfoil but failed to account the amount, which he admitted but to have only remitted on 14.08.2004, thus he temporarily misappropriated Rs. 7,000/- (ii) he misappropriated the following amount in the above manner (a) A. Muniappan, SB A/c No. 13370 on 16.11.2003 of Rs. 5,000/- (b) D. Shashikala, SB A/c No. 5482 on 11.12.2008 of Rs. 7,000/- (c) Kannappa Naicker, SB A/c No. 1575 on 13.01.2004 of Rs. 4,000/- (d) G. Bharathy, SB A/c No. 7524 on 25.02.2004 of Rs. 10,000/- (e) G. Lakshmi, SB A/c No. 14081 on 30.06.2004 of Rs. 10,000/- (f) M.S. Shashikala Devi, SB A/c No. 14566 on 18.07.2004 of Rs. 4,200/- (g) C. Devarajan, SB A/c No. 3395 on 20.07.2004 of Rs. 34,500/- (h) M. Mallappan, SB A/c No. 11125 on 08.07.2004 of Rs. 4,500/- (iii) In the same transactions he had used the earlier original challans of the respective customers, except that of Kannappa Naicker, altered and remitted the amount into their SB Accounts so as to cover the fraudulent transactions done (iv) He prepared pay-in-slip for Rs. 7,000/- on 14.08.2008 in the SB Account No. 11964 as if remitted by Smt. A. Sumathy (v) prepared pay-in-slip and remitted Rs. 4,000/- on 17.01.2004 in SB A/c No. 1575/- as if by Sri Kannappa Naicker (vi) receiving Rs. 20,000/- for credit to SB A/c No. 13446 on 25.02.2004 entered the same on the same day after considerable lapse of time under batch on 360/7/1 at 11.12 AM (vii) his SB A/c No. reveals abnormal transactions and he being heavily indebted to private parties, availing loan without bank's permission, constituting gross misconduct under Clause-5 (j) of the 10.04.2002 Bipartite Settlement causing serious loss to the bank. The domestic enquiry held the charges proved, though not really proved. On 13.07.2006 punishment of dismissal from service without notice was imposed. Appeal preferred was rejected on 26.09.2006. ID raised having failed reference is occasioned. Charges were without any complaint. Customer were not made witnesses. Deletion Entry Log Book not being produced misappropriation is not proved. The approach of the Management was perverse. The workman served for 26 years with unblemished service records. Plight of the family dependent on him was not taken into consideration to impose punishment of Compulsory Retirement requested for in conciliation too. Capital punishment was imposed. The dismissal, a capital punishment, may be modified as Compulsory Retirement to enable new jobs and also for some financial benefits.

4. Counter Statements averments briefly read as follows:

On 14.08.2004 a cheque for Rs. 5,000/- of Smt. A Sumathy was to be dishonored. There being no balance in her SB account no. 11964, when the matter was probed into with reference to counterfoil and pass book, produced by her, the fact of remittance of Rs. 7,000/- on 04.08.2004, received by the workman through the system but was found pocketed by him, which he made good on 14.08.2004, confessing his mistake. The other similar 8 transactions

handled by him were also detected. Investigation revealed his misconduct. Show Cause Notice was issued on 23.11.2005 to which he gave a reply on 15.12.2005 denying the charges. On 20.12.2005, 7 charges were issued against him. In the enquiry he participated. Four witnesses were examined. On 24.04.2006 copy of enquiry report dated 07.04.2006 was furnished to him to which on 11.05.2006 he gave his comments. Second Show Cause Notice dated 17.06.2006 was issued proposing dismissal and for personal hearing on 11.07.2006. After considering his representation on 13.07.2006 he was dismissed from service. Appeal was dismissed in 26.09.2006. The dismissal is justified and there is no scope for interference. He was only asking for modification of punishment of dismissal to Compulsory Retirement which he cannot make as lenience would be a premium for commission of such misconduct. Counterfoils not being bank documents, non-production of the same would not absolve the workman of the charges. Charges were proved in evidence as well as by confession. The system furnishing the deletion entries, deletion entry log book would not advance the case of the workman. The punishment is to be upheld.

5. Rejoinder averments in a nutshell are as follows:

Workman did not confess. Prayer for modification of punishment should not be construed as acceptance of charges. Account holders should have been witnessess to prove the misconduct. Admittedly the management has not thoroughly probed the charges. Hence dismissal is perverse and not justified.

6. Points for consideration are:—

(i) Whether the demand for reduction of punishment of dismissal to compulsory retirement is legal and justified?

(ii) To what relief the concerned workman is entitled?

7. Evidence consists of Ex. W1 to Ex W14 on the petitioner's side and Ex. M 1 to Ex. M 18 on the Respondent's side, all marked on consent with no oral evidence adduced on either side.

Points (i) & (ii)

8. Heard both sides. Perused the records, documents and written arguments on behalf of the petitioner. The arguments were in terms of their pleadings, that the charges were not proved, that there was no complaint from the account holders and they have not been examined. That modification of punishment was sought for at the conciliatory stage since it was really difficult for the workman to work in a hostile environment with the Management even if reinstated. With the facility built in the system itself to rectify mistakes the same was construed as an act of misappropriation which is not proper. Out of the 4 counterfoils produced, 1 counterfoil relating to SB A/c 1575 has nothing to do with the charge as it bears dated 14.07.2004 whereas it mentions the date as 13.01.2004.

There is no financial loss either to the bank or to the customers. The modification of punishment to compulsory retirement with superannuation benefits is to be ordered. The claim is not due to the tacit admission of the guilt. Section-11A can be applied.

9. The contra arguments on behalf of the Respondent are that there is no scope for sympathy in a case of misappropriation which underlies propensity to be dishonest. He has indulged in a total of 9 instances of misconduct. He admitted the misconduct, in the enquiry as evidenced by Ex. M2-Investigation Report for which he has no plausible explanation. In a case of proved grave misconduct perpetrated any past record of good service is not material and it cannot come to this rescue.

10. Respondent relied on the decision of the Supreme Court in KERALA SOLVENT EXTRACTIONS LTD. VS. A UNNIKRISHNAN AND ANOTHER (1944-2-LJ-888) wherein it was held "7. *We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.*

11. The workman only seeks modification of the punishment of dismissal from service into compulsory retirement so that he may derive some benefits by way of superannuation from service by reason of having rendered 26 years of service. Though he had moted this before at the conciliation stage it was not found favour with him.

12. Discernibly by detection of the misconduct of the misappropriation of moneys by the workman was occasioned at the instance of the bank when the account holder Smt. A. Sumathy met with chance of dishonor of her cheque for Rs. 5,000/- dated 14.08.2004 due to there having been no balance in her SB Account no. 11964 though there was a remittance of Rs. 7,000/- on 04.08.2004, which fact on being reported to the officials happened to be probed resulting in a investigation report pinpointing the workman to have done temporary misappropriation of the amount with similar other instances on supporting materials. Though there is no financial loss to the bank or

the customers it is the propensity to be dishonest, which should not go unpunished. Non-examination of the account holder or the fact that there were no complaints produced is not relevant consideration. The question is whether the misconduct committed is proved for which there is also the confession of the guilt by the workman who remitted the amount when the fact came to be detected. Though result of investigations is not admissible in evidence in strict compliance of CPC and Evidence Act provisions, that mode of application is not relevant in industrial adjudication. Matters logically probative are enough to prove a given fact of misconduct. Needless to say as to whether the workman has been guilty or not is no more an axe to grind since it is virtually admitted as well as proved that he is guilty.

13. Now what calls for consideration is regarding the punishment. He solicits conversion of "Dismissal from service" into "Compulsory Retirement" so that he may get some benefits in terms of superannuation apart from other aspirations whether they will get materialized or not taking into account the miserable plight of his family members depending on him who was had to quit the service after having rendered 26 years of unblemished service which is not disputed. He had made this claim during the conciliation stage, that is to say not at or until the enquiry was over culminating in the enquiry report and the punishment that followed.

14. The argument against solicitation of the workman for the reduced punishment of Compulsory Retirement raised on behalf of the Respondent, *inter-alia*, is that if such a claim is magnanimously allowed the same would be premium for the misconduct committed. In the demand of the workman what appears is that the same is very specific only and is in the place of outright claims for setting aside the punishment with consequent orders for reinstatement with all benefits, etc. It is very relevant to consider whether the solicitation of Compulsory Retirement in the place of Dismissal raised by the workman would amount to a premium for such misconduct. A reason highlighted on his behalf for such a stand is that due to his difficulty to work under the Management in a hostile environment if he is reinstated. Though this may be plausible explanation, it does not find averred in the Claim Statement. It is not to be regarded as an instance of plea-bargaining to the benevolence of the petitioner since once he has been thrown out of employment he should seek asylum by way of relief moulding it in a manner suiting to his needs, no matter whether it finds approval and recognition as such itself when some relief are really granted. Another important aspect of the matter is whether if the relief sought for by way of modification of dismissal into compulsory retirement is granted the same would be an instance of extension of misplaced sympathy, generosity and private benevolence by allowing the judicial process to degradation. Again the question is whether it will disrupt

the integrity of legal reasoning and the legitimacy of the conclusions, which no doubt should emanate logically from the legal findings. It is also pertinent to consider whether such a stand would fall down to an instance of mistaken and misplaced compassions at the expense of the legitimacy of the process and would lead to mutually irreconcilable situations denuding the dignity, authority, predictability and respectability of the judicial process.

15. Having pondered quite some time I am led to the conclusion that every instance of a modification of a punishment to one less severe in nature for cogent reasons may not lead to extension of sympathy or generosity and would not be illegality or impropriety denuding the dignity, authority, predictability and respectability of the adjudicatory forums. The authorities competent to impose punishment always have a duty to be fair when they are at the spur of a moment to decide as to the quantum of punishment to be imposed on a delinquent proved guilty of a given misconduct. The authority when discharges the function has a sublime and noble duty to exercise its discretion in a judicious manner consistent with justice, equity and good conscience uninfluenced by extraneous consideration, and doctrinaire approach that for the misconduct committed he should invariably be done away with economically. The background scenario of the circumstances in relation to his personal life, family life or social life in which the misconduct may have been committed, though which set of facts constituting the background scenario, may not always be forthcoming from the part of the workman presumably or possibly for the reasons of his miseries or wretched conditions of personal or family life which in may not be pleasant to be unveiled. Here the workman has had a case at least at the conciliation stage that due to the punishment of dismissal entailing in his economic death the plight of his family members fell out of consideration of the authority. When a delinquent should have to be terminated from service owing to some proved misconduct, grave in nature, the Disciplinary Authority has to determine for himself the degree of the misconduct from among the different degrees in which a misconduct may have been committed. The Authority shall not jump into hasty conclusions as to the punishment imposed. It is well to remember that noticeably, there have been instances of cases in which a workman who misappropriated moneys extending to crores of rupees, without any possibility of the same having been recovered, while was terminated from service with the punishment of dismissal where the degree of the misconduct committed is awfully large creating panic in the mind of all geared to a righteous and normal life, a delinquent guilty of misappropriation of meagre sums is also punished with the same punishment of dismissal, gives a wrong signal. The degrees of misconduct also have to be weighing considerations and measuring rods in the matter of punishment for such minconducts. Though in case of

misappropriation the underlying temptation is the propensity to do the wrongful act actuated by moral turpitude the degree in doing it at alarming proportions is to be distinguished from the degree of the state of mind impelling indulgence in the misappropriation of very sundry sums which way be done out of miseries and wretched situations in personal and family life of individuals often beyond control, by which really they do know for certain that they are committing lapses by falling from virtue. Though, in such cases the propensity to commit, *viz.* the mental element of the crime is to be punished the punishment should be in accordance with variance in the degrees in which the injurious consequences ensure. It is good to recall to our mind that there is a long mental distance between criminal intent to indulge in the misappropriation of money extending to crores of rupees and the criminal intent to commit the same offence extending to mere thousands. The same may be the reason for providing various punishment, *viz.* dismissal, removal, discharge, etc. under the caption "*Termination from Service*", the first in the ordinal numeral being dismissal which is to be inflicted for the highest misconduct falling under the item. Treating formidable delinquency and innocent delinquency alike may not be just and proper. So viewed, I am of the considered opinion that in the case of the workman the punishment should fall under the caption coming under the last in the ordinal numeral *viz.* Compulsory Retirement, which the workman has solicited, and which even if not so asked for by him would have been a weighing consideration by the adjudicatory forum. In such a view of the matter also when the adjudicator steps down to convert the punishment of dismissal into one of the compulsory retirement it is not to be read as one out of expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process leading of denudation of judicial process of its dignity, authority, predictability and respectability. This cannot be said to be illegal findings emanating illogically. This cannot be said to be a misplaced sympathy, generosity and private benevolence. Again this cannot be said to be illogical and untenable not within the framework of law to run the risk of incurring and justifying the criticism that the Courts tend to degenerate into misplaced sympathy, etc.

16. Sympathetic considerations also cannot be totally out of the realm of punishment as has been held in several pronouncements of the Upper Judicial Hierarchy. In this context it is also worthy to note the decision of the High Court of Andhra Pradesh in BANGARU KOTESWARAMMA & OTHERS VS. G. SRINIVASARAO & ANOTHER (2011-LLR-1105) wherein it is held as follows "31. *The shinning of justice will be increased if the Judge rendering justice has humane approach, kind and honest heart. Rejecting the claims of the poor on mere technical grounds without reading and understanding the evidence or relevant provisions of the Act would result in great*

injustice to the poor. Justice not tendered with mercy cannot be called real and substantial justice. Brain without heart cannot make a complete and perfect gentleman (woman). Time and again, noble Judges have been insisting that mere technical approach should not result in denying substantial justice. India does not mean Ratan Tata, Goenka or Sibu Soren, but India includes a minor girl who is a victim of trafficking, a , minor boy forced to become a bonded labourer, a wife of a farmer with minor children where husband committed suicide because of spurious seeds or pesticides. India means all those-we should not forget that. It is the responsibility of all the wings-Executive, Legislature and Judiciary to see that JUSTICE-Social, Economic and Political is guaranteed to all the citizens of the country. As observed by the Apex Court, if steps are not taken to unearth the black money lying in the foreign banks, great economic justice (injustice) can be done to the society. A dare step of unearthing black money would solve many problems being faced by this country. But alas, except mere promises and pronouncements, nothing substantial has been done and we have to await for a birth of another Mahatma Gandhi or another Bhagat Singh with optimism."

17. My above discussion leads me to the conclusion that while the workman should not be allowed to continue in service because of the confidence reposed on him by the bank being lost or is apt to be lost be reason of the misconduct committed by terminating his services, that course could be resorted to in some fairness by sending him out with the terminal benefits by reason of superannuation for having rendered 26 years of service. Though the very 26 years of service has not been with leaving any imprints of blemished service, yet it is not a consideration for imposing reduced punishment than was in contemplation of the competent authority. But for the other reasons discussed above it is only just and proper that the workman is given Compulsory Retirement so that he may derive his superannuation benefits. it is ordered accordingly setting aside the punishment of dismissal imposed on him.

18. The reference is answered accordingly. (Dictated to the P.A. transcribed and typed by him corrected and pronounced by me in the open court on this day the 5th January, 2012).

A.N. JANARDANAN, Presiding Officer.

Witnesses Examined

For the 1st Party/Petitioner : None
For the 2nd Party/1st Management : None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ex.W1	23.08.2004	CO:CH:N:VIG: C: 128:2004 from Circle Office, Chennai North placing Sri T. Sundaramurthy under Suspection
Ex.W2	23.09.2004	Show Cause Notice from Circle Officer, Chennai North to Sri T. Sundaramurthy
Ex.W3	20.11.2004	Reply letter from Sri T. Sundaramurthy to the above for the above letters
Ex.W4	23.11.2005	CO:CH:VIG: C: 2005 from Circle Office, Chennai Show Cause letter to Sri T. Sundaramurthy
Ex.W5	15.12.2005	Reply from Sri T. Sundaramurthy to the above letter
Ex.W6	20.12.2005	Charge Sheet CO:CH:VIG: Claim Statement:128:CHEN 2005
Ex.W7	06.03.2006	Presenting Officer's report in respect of enquiry on the above charge sheet
Ex.W8	02.04.2006	Defence brief on the enquiry conducted under charge sheet CO:CH:VIG: Claim Statement: 128:CHEN 2005 dated 20.12.2005
Ex.W9	24.04.2006	Letter from General Manager, Circle Office, Vigilance Department forwarding the Enquiry Officer's report
Ex.W10	07.04.2006	Enquiry Officer's report for the enquiry conducted on the above referred charge sheet
Ex.W11	11.05.2006	Defence Representative reply to the Enquiry Officer report
Ex.W12	13.07.2006	Letter from DGM/Disciplinary Authority imposing punishment of "Dismissal from service without notice" on Sri T. Sundaramurthy
Ex.W13	26.09.2006	Orders of Appellate Authority confirming the punishment imposed on Sri T. Sundaramurthy
Ex.W14	18.09.2007	Letter IBEA/GEN/164/2005-08 from the petitioner union to the

		Assistant Commissioner of Labour (Central) raising an Industrial Dispute against the punishment of Sri T. Sundaramurthy	20.00 Lakhs received by the CSE
Ex.M13	August 2004	Branch Attendance Register for August 2004	
Ex.M14	-	Office Order for work allocation for clerical staff w.e.f. 15.4.2004	
Ex.M15	23.08.2004	Branch letter addressed to the Vigilance Department Circle Office reporting the misappropriation of cash by CSE	
Ex.M16	17.06.2006	Second Show Cause Notice proposing punishment of dismissal, calling for the representation of the CSE and notice to appear for personal hearing	
Ex.M17	05.07.2006	Reply of CSE for the Second Show Cause Notice dated 17.06.2006	
Ex.M18	26.02.2010	No. M/7/39/2009-B2/B-3 Submission FOC Report by Assistant Commissioner of Labour (Central) to the Secretary, Ministry of Labour and Employment, New Delhi regarding dismissal of T. Sundaramurthy	
नई दिल्ली, 7 फरवरी, 2012			
<p>का०आ० 882.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 56/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 29-12-2011 को प्राप्त हुआ था।</p>			
[सं. एल-12012/115/2003 आई आर (बी-II)] शीश राम, अनुभाग अधिकारी			
New Delhi, the 7th January, 2012			
<p>S.O. 882.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 the Central Government hereby publishes the Award (<i>Ref. No. 56/2005</i>) of the Central Government Industrial Tribunal/Labour Court Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 29.12.2011.</p>			
[No. L-12012/115/2003-IR(B-II)] Sheesh Ram, Section Officer			

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर
सौ.जी.आई.टी.प्रकरण सं. 56/2005

श्री एन. के. पुरोहित
पीठासीन अधिकारी

विज्ञप्ति सं. (रेफरेन्स नं.-L-12012/115/2003-IR (B-II)

दिनांक 29/4/2005

Shri Gordhan Suman S/o., Sh. Nand Kishore Suman
C/o Joint Secretary, Hind Mazdoor Sabha,
Bangaly Colony, Chawani,
Kota (Rajasthan)

V/s.

- (1) The Regional Manager,
Punjab National Bank,
Regional Office, Super Bazar,
Bharatpur (Rajasthan)
- (2) The Secretary, Canteen Samiti,
Punjab National Bank,
Bharatpur (Rajasthan)

प्रार्थी की तरफ से : एक-पक्षीय कार्यवाही
अप्रार्थीगण की तरफ से : कोई उपस्थित नहीं
पंचाट:

दिनांक 28/11/2011

केन्द्रीय सरकार के द्वारा निम्न विवाद औद्योगिक अधिनियम, 1947 की धारा 10 की उपधारा के खण्ड (घ) के प्रावधानों के अन्तर्गत उक्त निर्देश के जरिए न्यायनिर्णय हेतु प्रेषित किया गया था।

"Whether the claim of Shri Gordhan Suman, S/o Sh. Nand Kishore Suman that he was engaged on daily wages by the management of Punjab National Bank during the period from 01.01.2000 to 30.11.2002 is correct? If so, whether the action of the Management in terminating him from service w.e.f. 01.12.2002 is legal and justified and what relief is the disputant concerned entitled to?"

2. प्रार्थी के अपने स्टेटमेंट ऑफ क्लेम में अभिवचन है कि उसे अप्रार्थी बैंक की छावनी ब्रांच, कोटा में दिनांक 01/01/2000 से दैनिक वेतन पर कार्य हेतु नियोजित किया था, लेकिन बाद में दिनांक 01/12/2002 को बिना किसी नोटिस या नोटिस के बदले एक माह के अग्रिम वेतन के या छठनी मुआवजा के सेवामुक्त कर दिया गया। प्रार्थी ने दिनांक 01/01/2000 से 30/11/2002 की अवधि में अप्रार्थी बैंक के नियोजन में निरंतर कार्य किया है और इस अवधि में 240 दिन से अधिक कार्य किया है। प्रार्थी के यह भी अभिवचन है कि उसे नौकरी से हटाए

जाने से पूर्व वरिष्ठता सूची का प्रकाशन नहीं किया तथा उससे कनिष्ठ श्रमिक अप्रार्थी के यहां कार्यरत थे। चूंकि उसकी सेवामुक्त अवैध है। अतः प्रार्थी को पिछले संपूर्ण वेतन एवं लाभों के साथ सेवा में बहाल किया जावें।

3. अप्रार्थी बैंक ने क्लेम के जवाब में कहा है कि श्रमिक एवं अप्रार्थी बैंक के मध्य मालिक-मजदूर के संबंध नहीं रहे। श्रमिक केवल मात्र केंटीन कान्ट्रेक्टर के रूप में बैंक कर्मचारियों को चाय-नाश्ता देने का कार्य करता था। अतः धारा 2(S) के अन्तर्गत वह श्रमिक की श्रेणी में नहीं आता। अप्रार्थी बैंक के यह भी प्रकथन है कि श्रमिक को छावनी शाखा, कोटा, में नियुक्त नहीं किया गया था। इसलिए सेवा-मुक्ति किये जाने का प्रश्न ही उत्पन्न नहीं होता। अप्रार्थी बैंक के यह भी प्राकथन है कि श्रमिक ने दिनांक 01/01/2000 से 30/11/2002 तक निरंतर कार्य नहीं किया। सफाई-कर्मचारी के अवकाश या अनुपस्थित रहने के दौरान उसने शाखा परिसर की सफाई का कार्य पूर्णतया अस्थाई एवं आकस्मिक आधार पर अंशकालीन दैनिक वेतनभोगी के रूप में मात्र 18 दिन कार्य किया है। जवाब में यह भी कहा है कि श्रमिक का नाम वरिष्ठता सूची में सम्मिलित किये जाने का प्रश्न ही नहीं था। अतः उसे कनिष्ठ अन्य श्रमिकों को नियोजन में रखे जाने का कथन गलत है। अतः प्रार्थी का क्लेम स्वीकार किये जाने योग्य नहीं।

4. प्रार्थी के आवेदन दिनांक 22/11/2005 जिसमें लोकल इम्प्लीमेंटेशन कमेटी को पक्षकार बनाए जाने की प्रार्थना की थी, को दिनांक 16/05/2006 के आदेश द्वारा को स्वीकार कर उक्त कमेटी को पक्षकार बनाया गया था। आदेश की अनुपालना में प्रस्तुत संशोधित टाईटल के अनुसार सचिव केंटीन समिति पंजाब नेशनल बैंक, भरतपुर को रजिस्टर्ड नोटिस प्रेषित किया गया। लेकिन नोटिस की तामील के बावजूद अप्रार्थी सं 2 की तरफ से कोई उपस्थित नहीं हुआ।

5. दिनांक 07/09/2010 को प्रार्थी के विरुद्ध एकपक्षीय पारित किया गया था तत्पश्चात् दिनांक 08/02/2011 को उक्त आदेश को अपास्त करने हेतु आवेदन प्रस्तुत किया। उक्त आवेदन के जवाब एवं बहस की स्टेज पर प्रार्थी प्रतिनिधि ने दिनांक 12/04/2011 को एक अन्य आवेदन प्रस्तुत कर जाहिर किया कि श्रमिक काफी समय से सम्पर्क में नहीं है और न ही उनके पत्रों का जवाब प्रस्तुत कर रहा है। अतः उसका प्रतिनिधित्व करने में असमर्थ है। उक्त आवेदन के आधार पर श्रमिक को रजिस्टर्ड नोटिस प्रेषित किया कि उसके प्रतिनिधि ने उसका प्रतिनिधित्व करने में असमर्थता प्रकट की है। अतः वह स्वयं आगामी तारीख को अग्रिम कार्यवाही के लिए पेश हो। लेकिन श्रमिक रजिस्टर्ड नोटिस की तामील के बावजूद उपस्थित नहीं हुआ। इन परिस्थितियों में दिनांक 21/11/2011 को पूर्व में प्रस्तुत उसके प्रार्थना-पत्र दिनांक 08/02/2011 जिसमें उसने एकपक्षीय कार्यवाही को अपास्त करने को प्रार्थना की थी, को निरस्त किया गया। उक्त तिथि 08/02/2011 को अप्रार्थी सं 1 बैंक और अप्रार्थी सं 2 सचिव, केंटीन समिति, पंजाब नेशनल बैंक की तरफ से भी कोई उपस्थित नहीं हुआ। अतः प्रत्रावली को पंचाट करने हेतु आरक्षित किया गया।

6. उक्त पृष्ठ-भूमि में न प्रार्थी अपने क्लेम के समर्थन में साक्ष्य प्रस्तुत करने हेतु उपस्थित हुआ है और न ही अप्रार्थीगण ने अपने जवाब के समर्थन में मौखिक साक्ष्य प्रस्तुत की है।

7. चूंकि अप्रार्थी ने प्रार्थी के क्लेम को अस्वीकार किया है। अतः यह सिद्ध करने का प्रारंभिक भार प्रार्थी पर था कि दिनांक 01/01/2000 से 30/11/2002 की अवधि में उसने अप्रार्थी के यहां कार्य किया है व दिनांक 01/12/2002 से पूर्ववर्ती 12 माह में उसने 240 दिन से अधिक अवधि तक कार्य किया है।

8. प्रार्थी ने क्लेम के समर्थन में कोई साक्ष्य नहीं दी है। ऐसा प्रतीत होता है कि प्रार्थी को इस मामले में आगे चलाने में कोई दिलचस्पी नहीं रही है। चूंकि अभिलेख पर कोई मौखिक एवं दस्तावेजी साक्ष्य नहीं है, इसलिए उक्त परिस्थितियों में विचाराधीन निर्देश का निस्तारण गुणागुण के आधार पर किया जाना संभव नहीं है। परिणामस्वरूप 'नो क्लेम अवार्ड' पारित किया जाता है। निर्देश का उत्तर तदनुसार दिया जाता है।

9. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17(1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावे।

एन° के पुरेहित, पीठासीन अधिकारी

नई दिल्ली, 7 फरवरी, 2012

का०आ० 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिवीजनल हास्पीटल पूर्व रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण आसनसोल के पंचाट (संदर्भ संख्या 38/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-02-2012 प्राप्त हुआ था।

[सं एल-41012/59/2007-आईआर०(बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 7th February, 2012

S.O. 883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 38/2007 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the industrial dispute between the management of Divisional Hospital Eastern Railway and their workmen, received by the Central Government on 07/02/2012.

[No. L-41012/59/2007-IR(B-I)]

Ramesh Singh, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

PRESENT : Sri Kishori Ram
Presiding Officer/Link Officer

REFERENCE NO. 38 OF 2007.

PARTIES : The Management of Divisional Hospital, Eastern Railway Asansol Division

V/s.

Their Workman

REPRESENTATIVES:

For the managements: None

For the union (Workman) : None

INDUSTRY: Railway STATE: WEST BENGAL

Dated the 05.01.12
25.05.10

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its letter No.L-41012/59/2007-IR(B-1) dated 02.07.07 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether DRM/Eastern Railway's action by not promoting Sri Nagendra Rai, X-Ray attendant in the post of Radiographer is justified? If not, what relief he is entitled to?

Having received the Order No. L-41012/59/2007-IR(B-1) dated 02.07.07 of the above said reference from the Govt. of India Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **38 of 2007** was registered on 03.05.07 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Since the predecessor (Late Manoranjan Pattanaik, the then P.O.) of the Tribunal as per order dated 25.05.10 had reserved for an award in this case because none of the parties responded to the notice or filed written statement. So it was found that they had no interest to proceed with the case and as such no dispute exists. Accordingly, it is hereby ordered.

ORDER

Let an "Award" be and the same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

Kishori Ram, Presiding Officer/Link Officer

नई दिल्ली, 7 फरवरी, 2012

का०आ० 884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डी० एम० आर०

सी० प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध १ में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 66/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2012 प्राप्त हुआ था।

[सं० एल० 41011/02/2009—आई०आर०(बी०-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 7th February, 2012

S.O. 884.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 Of 1947), the Central Government hereby publishes the Award Ref. 66/2009 of the *Cent Govt. Indust. Tribunal-cum-Labour Court No. 2, New Delhi* as shown in the Annexure, in the industrial dispute between the management of *DMRC* and their workmen, received by the Central Government on 07/02/2012.

[No-L-41011/02/2009-IR(B-1)]

Ramesh Singh, Desk Officer

ANNEXURE

IN THE COURT OF SHRI SATNAM SINGH PRESIDING OFFICER

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT-II, DELHI

ID NO. 66/2009

The Secretary,
DMRC Employees Union,
3, V.P. House, Rafi Marg, New Delhi.

Workman

VERSUS

The Managing Director, DMRC.NBCC Place, Bhishm Pitamah Marg,
Pragati Vihar, New Delhi-3.
Management

AWARD

The Central Government, Ministry of Labour *vide* order No.L-41011/02/2009-IR(B-1) dated 20.10.2009 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of DMRC in imposing the penalty of removal from services *w.e.f.* 2.9.2008 on Shri Inderjeet is justified? If not, what relief he is entitled?"

2. Ever since the reference was received in this court the workman seems to be not taking interest in getting his claim adjudicated upon. In fact, even no statement of claim has been filed by the workman till today. On 12.07.2010 he was given last opportunity for filing the statement of claim

for 29.9.2010. The workman appeared on that date but still did not file the statement of claim and instead made a statement that the matter was being settled. Since 22.10.2010 he has stopped attending the court. It is not known if the matter has been settled by him out of court as no such information has been passed on to the court. As the workman is not attending the court for the last so many dates of hearing there is no way out except to conclude that he is not interested in the outcome of this reference. In these circumstances a no dispute award is hereby passed in this case and the reference sent by the Govt. of India to this Tribunal stands disposed of accordingly.

Dated: 11.01.2012 Satnam Singh, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

का०आ० 885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी० सी० सी० एल० एवं प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध १ में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद न०-२ के पंचाट (संदर्भ संख्या 26/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.02.2012 को प्राप्त हुआ था।

[सं० एल० 20012/06/2006—आई०आर०(सी०-1)]

डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 885.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 Of 1947), the Central Government hereby publishes the Award (**Ref. 26/2006**) of the *Central Govt. Indust. Tribunal-cum-Labour Court No. 2, Dhanbad* as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of *M/s. BCCL*, and their workman which was received by the Central Government on 08/02/2012.

[No-L-20012/06/2006-IR(C-I)]

D.S.S. Srinivasa Rao, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD.

PRESENT

Shri Kishori Ram,
Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)
(d) of the I.D. Act., 1947.

Preference No. 26 of 2006.

Parties: Employers in relation to the management of Kusunda Area of M/s. BCCL and their workman.

Appearances:

On behalf of the workman : None
 On behalf of the management : Mr. U.N. Lal, Ld.
 Advocate
 State : Jharkhand Industry : Coal

Dated, Dhanbad, the 18th Jan., 2012.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/6/2006-IR (CM-1) dated 1.6.2006.

SCHEDULE

"Whether the contention of the management of BCCL, Kusunda Area that Sh. Suresh Mallah was dismissed from service *w.e.f.* 25.6.2002 before his death on 1.5.2004 is correct? If so, whether the said dismissal was just, fair and legal? 2. If answer to (1) above is in the negative, whether the demand of the NCWC that Smt. Asha Devi, wife of Late Sh. Suresh Mallah be given employment under the provisions of NCWA and paid monetary compensation pending such employment, justified?"

2. None represented the Union/workman nor written statement filed on behalf of the Union/workman concerned/petitioner. Mr. U.N. Lal, the Ld. Advocate for the management, is present. From the perusal of the case record, it is clear that despite Regd. Notices dtts. 29.10.2010, Show causes dt. 4.3.2011 and 16.11.2011 to the Union General Secretary, on the address of the Union as provided in the Reference Order dt. 01.06.2006, and earlier Regd. Notices, the Union/workman/petitioner all along did not appear since 16.10.2007 pending for filing W.S. on behalf of the petitioner concerned.

whereas Mr. U.N. Lal, the Ld. Advocate for the management from 10.3.2008 (later on) has been present to represent the management. The present reference as per schedule involves the issue dismissal of workman Suresh Mallah *w.e.f.* 25.6.2002 prior to his death on 1.5.2004 and about the employment of his wife Asha Devi. But the conduct of the Union as well as the petitioner shows their disinterestedness in pursuing the case of the year 2006.

Under these circumstances, proceeding with the case for adjudication for indefinite time is futile. Hence the case is closed and accordingly the order is passed.

Kishori Ram, Presiding Officer.

नई दिल्ली, 8 फरवरी, 2012

का०आ० 886.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी०सी० लिमिटेड

एवं के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, धनबाद न०-1 के पंचाट (संदर्भ संख्या 24/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/02/2012 का प्राप्त हुआ था।

(सं. एल-20012/113/2005-आई आर (सी-1)

डॉ०एस०एस० श्रीनिवास राव, डेस्क अधिकारी।

New Delhi, the 8th February, 2012

S.O. 886.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (*Ref. No. 24/2006*) of the *Central Government Industrial Tribunal-cum-Labour Court-I, DHANBAD*, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of *M/s. C.C. Ltd*, and their workman, which was received by the Central Government on 08/2/2012.

[No. L-20012/113/2005-IR(C-1)]

D.S.S. Srinivasa Rao, Desk Officer.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.I, DHANBAD.**

In the matter of of a reference U/S/ 10(1) (d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 24 of 2006.

Parties : Employers in relation to the management of Argada Colliery of M/s. C.C. Ltd.

AND

Their Workmen.

Present : Shri H.M. Singh,
 Presiding Officer.

Appearances :

For the Employers : Shri D.K. Verma, Advocate.
 For the Workmen : Shri D. Mukherjee,
 Advocate.

State : Jharkhand. Industry: Coal.

Dated, the 30-1-2012.

AWARD

By order No. L-20012/113/2005-IR-(C-I) dated 19.12.05 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the demand of the Coal Fields Mazdoor Union from the management of CCL, Argada Colliery that the date of birth of Sh. Chandra Shekhar Pandey be corrected as 12.2.49 on the basis of Mining Sirdar Certificate, justified? If so, to what relief is the workman entitled?"

2. The case of the concerned workman, Chandra Shekhar Pandey, is that he was originally appointed at Sirka Colliery, as Prop. Mazdoor on 1.4.67. At the time of appointment his date of birth was recorded as 12.2.1949. He was under the impression that his date of birth was recorded in Form 'B' Register as 12.2.49 after nationalisation of the colliery. Some interested person with some ulterior motive changed the date of birth of the concerned workman in the Form 'B' Register of the nationalised colliery as 1.2.1946 and also 1.7.46. In the Year 1987 the management issued a service except to the concerned workman recording therein his date of birth as 1.7.46. He submitted to the management that his date of birth is 12.2.49 as per Gas Testing Certificate and as per Mining Sirdarship Certificate issued by the DGMS, and as per 1.1.76 the date of birth as recorded in the Gas Testing and Mining Sirdar Certificate shall be accepted as final. As per School Leaving Certificate the date of birth of the concerned workman is 12.2.49. He repeatedly demanded for recording his date of birth as 12.2.49 but unfortunately the anti-labour management issued notice for his retirement *w.e.f.* 28.2.2006. The Union on behalf of the concerned workman raised an industrial dispute before the ALC (C), Hazaribagh but the same ended in failure due to the adamant attitude of the management. Therefore, Govt. of India, Ministry of Labour, referred the dispute to this Tribunal for adjudication. The action of the management is not recording date of birth as 12.2.49 was illegal, arbitrary, unjustified and against the mandatory provision of 1.1.76.

Under the above facts, it has been prayed that the Hon'ble Tribunal be pleased to answer the reference in favour of the workman by directing the management to record his date of birth as 12.2.49 and in the event of illegal retirement from 28.2.06 the workman be reinstate in service with full back wages.

3. The case of the management is that the concerned workman joined the Coal Company in the year 1967 and the first time in the year 2004 the sponsoring union raised the industrial dispute for correction of the date of birth of the concerned workman which is not maintainable. The Hon'ble Supreme Court in catena of cases laid down that the demand for correction of date of birth at the time of retirement or at the fag end of the career is not maintainable and such activities was deplored by the Hon'ble Supreme Court. He retired from the service of the company on superannuation *w.e.f.* 28.2.2006. The date of birth of the concerned workman is recorded as 12.2.1946 in the Form 'B' Register. He put his signature as token of acceptance of

the particulars recorded in Form 'B' Register. Register Form 'B' Register is a statutory record of the Company under the Mines Act and the Rules framed thereunder and the entries made therein has got force. Service Excerpt was issued to the concerned workman in the year 1987 showing his date of birth as 1.7.1946 and the concerned workman returned the said service excerpt without raising any objection regarding his date of birth. In the year 1991 the concerned workman was subjected to Age Determination Committee/Medical Board for assessment of his age/date of birth. The Age Determination Committee/Medical Board assessed his date of birth as 12.2.1946, which was communicated to the concerned workman vide letter No. 2245 dated 25.4.1991. After receiving the letter he did not raise any objection. The date of birth recorded in Mining Sirdar Certificate is not acceptable as the workman concerned passed the aforesaid examination after his appointment.

It has been prayed that the Hon'ble Tribunal be pleased to hold that the demand of the union for correction of date of birth of the concerned workman is not legal and justified and he is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced himself as WW-1, Chandra Sekhar Pandey, and proved Exts. W-1, W-2 & W-3.

The management has produced MW-1, Umesh Singh, and proved documents as Exts. M-1 to M-4.

6. Main argument advanced on behalf of the concerned workman is that his date of birth is 12.2.49 which was recorded in Form 'B' Register. After nationalisation his date of birth has been recorded as 1.2.46. In the year 1987 he was issued service excerpt in which his date of birth has been recorded as 12.2.1946 and he has been wrongly superannuated *w.e.f.* 28.2.2006. Management did not refer him to Medical Board for assessment of his age.

7. The management argued that the date of birth of the concerned workman has been recorded in service record as 12.2.1946 and the same was communicated to him, but he did not raise any objection. He raised objection in the year 1991. So his age cannot be considered on the basis of Mining Sirdar Certificate. He was appointed on 1-4-67 and obtained the Sirdar's Certificate 8 years after his date of appointment. It may show that he had not given this certificate at the time of appointment. If his date of birth is considered as 12.2.49 then he cannot be appointed on 1.4.67 just after attaining the age of 18 years 1 month & 19 days. Moreover, in his evidence WW-1 in cross-examination stated that I joined the company in 1967. This dispute has been raised by me for the first time in 2004. I have produced certificate before joining service. This Gas Testing

Certificate dated 7.10.1977 which has got no relevancy because he entered into service in the year 1967. Mining Sirdar's Certificate dated 24.5.1975, it only shows that it has been manufactured and falsely date of birth has been entered as 12.4.49. Moreover, Ext. M-2, Form 'B' Register cannot be denied which has been maintained under Mines Act, in which date of birth of the concerned workman has been recorded as 12.2.46. In Service Excerpt the date of year has been mentioned as 1946 in which the concerned workman has also signed, so it cannot be denied later on. In Ext. M-1 also his date of birth has been found 1946.

8. The management has referred 2007(3) JLJR 470 in which Hon'ble Jharkhand High Court laid down - "Labour and Industrial Laws — Date of birth correction — reliance made on Sirdar's Certificate and School Transfer Certificate issued after about 6-7 years of the appointment —these certificates having been issued much after appointment cannot be considered to be conclusive proof of date of birth - when the case has been fully considered by the Date of Birth Committee which found the date of birth as entered in Statutory Form B Register as correct on the basis of service records, raising dispute about date of birth of the employee at the fag end of his service is not permissible."

9. Considering the above facts and circumstances, I hold that the demand of the Coal Fields Mazdoor Union from the management of CCL, Argade Colliery that the date of birth of Sh. Chandra Shekhar Pandey be corrected as 12.2.49 on the basis of Mining Sirdar Certificate is not justified. Hence, the concerned workman is not entitled to any relief.

This is my Award.

H.M. Singh, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

कांग्रेस 887.—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बींसी०सी०एल०एवं के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण धनबाद नं-1 के पंचाट (संदर्भ संख्या 08/ 2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-02-2012 को प्राप्त हुआ था

[सं. एल-20012/401/2001 आई आर (सी- 1)]

डी०एस०एस०राव
डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 08/2002**) of the **Central Government Industrial Tribunal-cum-**

Labour Court-1, Dhanbad, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL, and their workman, which was received by the Central Government on 08.02.2012.

[No. L-120012/401/2001-IR(C-1)]

D.S.S. SRINIVASARAO
DESK OFFICER

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of a reference U/s.10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 8 of 2002

Parties: Employers in relation to the management of Bararoo Colliery of M/s. BCCL.

AND

Their Workman

Present: Shri H.M. Singh
Presiding Officer.

APPEARANCES:

For the Employers : Shri D.K. Verma, Advocate

For the Workmen : None.

State: Jharkhand Industry : Coal

Dated, the 31.1.2012

AWARD

By Order No.L-20012/401/2001-IR(C-1) dated 10.1-2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of BCCL, Bararoo Colliery in stopping Shri Rashik Bouri from Joining duty after absence is justified? If not to what relief is the concerned workmen entitled?

2. This reference case was fixed on 9.7.2010 for adducing evidence by the management on preliminary point. But inspite of giving severral adjournments none appeared on behalf of the workman to cross-examine the management's witness. It seems that neither the concerned workman nor the sponsoring union is interested to contest the case. Shri D.K. Varma, appearing on behalf of the management submitted that since none is taking any interest on behalf of the workman necessary order may be passed in this case.

In view of such circumstances, I pass a 'No. Dispute' Award in this reference case.

Sd/
H.M. SINGH,
Presiding Officer.

नई दिल्ली, 8 फरवरी, 2012

का०आ० 888.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी०सी०सी०एल० एवं के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण धनबाद न०-2 के पंचाट (संदर्भ संख्या 26/ 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-02-2012 को प्राप्त हुआ था

[सं० एल-20012/270/2004 आई आर (सी- I)]

डॉ०एस०एस०एस० राव
डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 26/2005**) of the **Central Government Industrial Tribunal-cum-Labour Court-2, Dhanbad**, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s. BCCL**, and their workman, which was received by the Central Government on 08.02.2012.

[No. L-20012/270/2004-IR(C-I)]
D.S.S. SRINIVASARAO
DESK OFFICER

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present
Shri Kishori Ram,
Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE NO. 26 OF 2005

Parties: Employers in relation to the management of South Balihari Colliery of P.B. Area, of M/s BCCL and their workman.

APPEARANCES

On behalf of the workman : Late H. Nath, Ld. Advocate;
On behalf of the management : Mr. U.N. Lal, Ld. Advocate;
State : Jharkhand Industry : Coal

Dhanbad, Dated, the 18th January, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/270/2004-I.R. (C-1) dt. 24.3.2005.

SCHEDULE

"Whether the demand of the Rashtriya Colliery Mazdoor Congress from the management of South Balihari Colliery of M/s BCCL for paying the wages of Cat. VI instead of Cat. III to Sri Rajaram Paswan, Haulage Operator is justified? If so, to what relief is the concerned workman entitled and from date?"

2. None represented the Union/workman nor any w.w. (Workman witness) produced evidence, for which several times Regd. Notices issued to the Union Vice President, RCMS, Bhuli, B-Block on its address as provided in the Reference Order dt. 24.3.2005 *vide* Regd. Notices dt. 26.11.10, 16.2.2011, 22.07.2011 and 16.11.2011, yet not a single witness for the evidence of the workman has been produced despite its pending since 30.8.2006.

The present Reference relates to an issue about the payment of wages of Cat. VI in stead of Cat. III to workman Raja Ram Paswan, Haulage Operator. The Conduct of the Union and the workman shows their disinterestedness to contest the suit. Under these circumstances, proceeding with the case for uncertainty is like pelting stone in the open sky. Hence the case is closed and accordingly no dispute award is passed.

Sd/-

Kishori Ram, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

का०आ० 889.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 191/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/02/2012 को प्राप्त हुआ था

[सं० एल-22012/92/1997-आई आर (सी-II)]

डॉ.एस.एस. श्रीनिवास राव, डेस्क अधिकारी
छम् क्षमसीपए जीम 8जी थमइतनंतलए 2012

S.O. 889.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 191/2002**) of the **Central Government Industrial Tribunal-cum-Labour Court, Nagpur** as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **WCL** and their workman, which was

received by the Central Government on 08/02/2012.

[No. L-22012/92/1997-IR(C-II)]

D.S.S. Srinivasa Rao, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/191/2002 Date: 29.12.2011

Party No. 1 : The Chairman-cum-Managing Director WCL, Civil Lines, Nagpur.

Versus

Party No. 2 : The General Secretary, Lal Zanda Coal Mines Mazdoor Union, C/o, WCL, Coal Estate, Civil Lines, Nagpur.

AWARD

(Dated: 29th December, 2011)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their Union, for adjudication, as per letter **No. L-22012/92/97-IR (C-II) dated 31.10.2002**, with the following schedule:—

"Whether the demand of Lal Zanda Coal Mines Mazdoor Union, Nagpur for regularization/absorption of 31 Canteen workers at Headquarters of WCL, Nagpur is legal and justified? If yes, to what relief they are entitled to?"

List of Canteen Workers

1. Shri Gyaneshwar Dularwar	Manager
2. Shri Sitaram Khirsagar	Cook
3. Shri Punna Swami Naidu	Cook
4. Shri K.N. Meshram	Cook
5. Shri Rupchand Bombarde	Cook
6. Shri Madhu Sahare	Assistant Cook
7. Shri Chandan Jambulkar	Assistant Cook
8. Shri Vinod Chivade	Waiter
9. Shri Hansraj Bhaisare	Waiter
10. Shri Badal Bombarde	Waiter
11. Shri Arun Gharde	Waiter
12. Shri Amirchand Bharti	Waiter
13. Shri Tarachand Gharde	Waiter

14. Shri Jitendra Jambulkar	Waiter
15. Shri Kishor Chivade	Waiter
16. Shri Siddharth Gedam	Waiter
17. Shri Papayya Katrapwar	Waiter
18. Shri V.D. Dongre	Waiter
19. Shri Ramchandra Bombarde	Waiter
20. Shri Masaram Bombarde	Waiter
21. Shri Kashiram Ukey	Waiter
22. Shri Bindulal Thakur	Waiter
23. Shri Deepak Paranjape	Waiter

Daily Wager

1. Shri Lakeshwar Gharde
2. Shri Manohar Gharde
3. Shri Rajesh Sharma
4. Shri Rajesh Mane
5. Shri Sudhir Nandagawari
6. Shri Sudhakar Rangari
7. Smt. Devkabai Ukey
8. Smt. Sindhubai Naidu

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union "Lal Zanda Coal Mines Mazdoor Union", filed the statement of claim on behalf of 31 Canteen workers and the management of the WCL ("Party No. 1" in short) filed its written statement.

The fact as pleaded in the statement of claim by the union is that at the Headquarters of WCL, there is a canteen, which is run by the co-operative society under the name and style of the "Western Coalfields Employees(HQ) Consumer Co-operative Society" and the said society is registered under the Societies Act and the Canteen is situated in the building of WCL Headquarters at Coal Estate, Nagpur and at the instance and initiative of the management of WCL, the said canteen was registered with the Directorate of Canteens, Ministry of Personnel, Public Grievances and Pensions, Department of personnel and Training, Government of India in the year 1985 and the registration number allotted to the canteen was A-19 C and the party no. 1 owns the canteen building and canteen management does not pay any rent for the same and party no.1 also provides furniture, electricity, water, utensil and other requisite materials required for the canteen and party no. 1 does the maintenance of the canteen and pays the wages of the employees of the canteen by way of subsidy and in the year 1991, in the issue of departmentalisation of the canteen and its workers registered with Registrar of

Canteens, Government of India, the Hon'ble Apex Court held that the canteen should be converted into departmental canteens and the employees concerned should be brought under the roll of the management and in compliance with the directives of the Hon'ble Apex Court, as well as the Directorate of Canteens, similar canteens functioning in different Governments Departments, namely, office of Accountant General, Maharashtra, Indian Bureau of Mines, Income-tax NEERI etc. were brought under the management and the union approached the party no. 1 to comply the directives of the directorate of canteens in tune with orders issued by the Hon'ble Apex Court, but the party no. 1 refused to act in the matter and the party no. 1 fixes the rate of eatables, tea, coffee etc. provided in the canteen and the party no. 1 provide Identity card and uniforms to the employee of the canteen and the union raised the matter of regularization of the workers of the canteen for conciliation, which was ultimately culminated in this reference. Prayer has been made for a direction to party no. 1 for regularization/absorption of the 31 canteen workers at headquarters with all consequential benefits.

3. The party no. 1 in its written statement has pleaded *inter-alia* that *prima-facie* there is no valid industrial dispute to be adjudicated upon, as there is no employer-employee relationship between the party no. 1 and the canteen workers and a valid industrial dispute can be raised only when, there is dispute between the employer and workmen and the head office of WCL at Nagpur is not a mine and it has no statutory obligation to run a departmental canteen at headquarters and in absence of any statutory obligation to run a departmental canteen, the persons working therein cannot be deemed to be employed by WCL and there would be no legal obligation to regularize/absorb them. The further case of the party no. 1 is that the issue of running a canteen came up for deliberation in JBCCI and it was agreed in NCWA-III that during the agreement period, the management would provide canteen in each of the colliery/establishments and the same would not be run by contractors and the canteen at WLC headquarters Nagpur was setup under the management and control of Western Coalfields Employees (HQ) consumer Co-operative society and the Co-operative society was registered under Maharashtra co-operative societies Act. 1961 in the year 1983 and the society is a legal and independent body carrying out its business within the frame work of its by-laws and the management of WCL has no control over its activities and the society is managed by its governing body constituted as per the bylaw and the governing body is elected by the general body of the members of the society and therefore, the employees who are appointed by the society for carrying out its business have no relationship of employer-employee of WCL and the society under misconception or for the reasons best known to them got the canteen registered with the Director of Canteens, Government of India, Director of Personnel and Training in

the year 1986 and there was direct communication between the co-operative canteen and the office of the Director of the Canteen and the management of WCL had no hand in it and the said registration remained valid only for one year, as the society discontinued sending its annual subscription and the society did not renew the registration by paying the annual subscription after March, 1988, the same automatically lapsed and became redundant and inoperative from April, 1988. The further case of party no. 1 is that the canteen is managed and controlled directly by the co-operative society the same is evident by the facts that all the persons working in the canteen have been appointed by the canteen and the management of WCL has no say in it, so much so that, they are not even consulted, the work to individual person is allotted by the governing body/management committee of the society and their wages/salary are fixed by the society without any consultation with the management, their attendance is maintained by the society, their wages/salary are directly paid by the society out of its funds, their leaves etc. are granted by the society, the grievances of the workers of the canteen are resolved through negotiation between them and the management is not concerned in the same and the society is maintaining its financial accounts quite independent of WCL and the accounts are annually audited by the auditors appointed by the society itself as per their bylaws and the assistance of WCL to the canteen is only in the form of grant and aid, apart from providing accommodation, electricity, water supply, furniture and equipments as a welfare measures and the financial subsidy is paid by WCL only for the purpose of supply of eatables by the canteen at cheaper rates and the institutions named by the union, where canteens run by the Government department at Nagpur have been departmentalized and workers regularized are quite different to WCL and WCL is not a department of the Government and it is a semi-government organization/public sector undertaking and therefore any rule or law applicable to government and government department will not be automatically applicable to the management of WCL, unless and until specifically provided so, and therefore, the claim of the union cannot be decided by comparison with the concerned organization/departments and rate of eatables are fixed by canteen managing committee constituted by the co-operative canteen society and identity cards have been issued to the canteen workers for security reasons, in order to prevent entry of unauthorized persons to the premises of the headquarters and therefore the union is not entitled for any claim.

4. Besides placing reliance on documentary evidence, both the parties have adduced oral evidence in support their respective claims. Manoj Hariprasad Sarabhai, the secretary of the union and one Narayan N. Morkhe have been examined as witnesses on behalf of the union, whereas, one S.N. Sanyyal a Personal Manager has been

examined as a witness by the Party No. 1. The evidence of the two witnesses examined by the Union is in the same line of the stands taken by the Union in the statement of claim. Likewise, the evidence of the witness examined of behalf of the party No. 1 is also in the line of the stands taken in the written statement by party No. 1.

The witness no. 1 for the union, Manoj Sarabhai in his cross-examination has stated that there was a decision about running of canteen in the Coal Wage Agreement. He has also admitted that the registration of the canteen with the Director of canteens was not renewed and out of the 31 canteen workers, three persons namely, Punna Swami, V.D. Dongre and Jambulkar are no more and he has not filed any document to show that WCL is a party to the appointment of canteen workers.

The witness no. 2 N.R. Morkhe, in his cross-examination has stated that the society which runs the canteen is registered under the co-operative societies Act and it has its governing body and all policy decisions are taken by the governing body and the committee has not taken the decision for closing or handing over the canteen and in 1985, they received the registration from the Director General of Canteens and the same was subjected to renewal every year and he cannot say the exact year in which it was lastly renewed and in 1993, they had approached the Director of Canteen for renewal of registration, but the Director refused to renew and advised them to handover the canteen to the management. He has admitted that WCL is a corporation having its separate service conditions and rules and the society has appointed the employees, who are working in the canteen and the society marks their attendance and prepare the wage sheet and the society pays them their wages.

The witness examined on behalf of the party no. 1 has been cross-examined at length regarding the facilities extended by the WCL to run the canteen. As it is the admitted case of the party no. 1 that WCL provides furniture, electricity, water, utensil by way of welfare measure and also give subsidy so that the canteen should supply the eatables at cheaper rate, the facts brought out in the cross-examination of the witness for party no. 1 are of no help to the case of the Union.

5. At the time of argument, it was submitted by the learned advocate for the union that in view of the judgment of the Hon'ble Apex Court in Writ Petition No. 6189-7044 and 8246-55 (C.K. Zha and others and P.N. Sharma and others) in regard to non-statutory departmental/co-operative canteen employees the canteen workers working in the canteen situated at the Head Office of WCL Nagpur are entitled for regularization/absorption in WCL and the party no. 1 owns the canteen building and provides furniture, electricity, water, utensils and other requisite materials required for the canteens and also maintains the canteen and pay wages of the employees by way of subsidy

and in view of the direction of the Director of Canteens WCL is bound for regularization/absorption of the 31 canteen worker.

In support of such contentions, the learned advocate for the union has placed reliance on the decisions reported in 1990 II CLR-261 (MMR Khan and others Vs. Union of India), 2008 II CLR-988 (GM ONGC, Silcer Vs. ONGC Contractual Workers union) 2007 (114) FLR-510 (Punjab National Bank Vs. Punjab National Bank Canteen Workers Union) and 2011 (2) Mh. L.J. 313 (Workmen of Taroda open Cast Mine of WCL Vs. Central Government Industrial Tribunal).

6. On the other hand, it was submitted by the learned advocate for the management that the ruling of the Hon'ble Apex Court has not been filed by the union and the documents filed by the union are the instructions of the Government of India, Director of Canteens and such instructions are not endorsed either to WCL management or the co-operative canteen functioning at WCL and since the canteen in question is not covered by the memorandum and from the documents it is found that the instructions are meant for non-statutory department/co-operative canteen located in Central Government Offices and not in Public Sector Undertaking, the same has no application to the WCL and the co-operative canteen is excluded from the purview of the Government Memorandum and it is clear from the evidence on record that the canteen though was registered with the director of canteen, the registration was not renewed after 31.3.1986 and the union has not filed any proof that the registration was renewed after 31.03.1986 and none of the essential conditions required by the Government Memorandum were satisfied by the cooperative canteen of WCL, warranting its departmentalisation and absorption of its employees and the facilities given to the canteen by the WCL is for the smooth functioning of the canteen and to facilitate supply of eatables at cheaper rate, keeping in view the provisions of the NCWA and the management of WCL has no control over the canteen and the co-operative society itself is in full control of the canteen and as such, the canteen workers cannot be regularized or absorbed.

7. Perused the documents filed by the parties. From the oral evidence and so also the documentary evidence, it is found that the Western Coalfields Employees (HQ) Consumer Co-operative society is running the canteen in question. In the statement of claim and so also in the evidence, it has been clearly mentioned by the union that the canteen is run by the co-operative society. It is also found from the documents that as per the NCWA, the management of WCL is providing different facilities including payment of certain amount to the canteen managing committee to enable the canteen to supply food articles at cheaper prices. The appointment of the workmen in the canteen, payment of wages to them and the

administrative control are being done by the co-operative society. The directive of the Government of India, is regarding the non-statutory departmental/co-operative canteen/Tiffin rooms located in the Central Government offices. Admittedly, WCL is not a Central Government Office and as such, the directives of the Director of Canteens are not applicable to the co-operative canteen WCL. As the facts and the circumstances of the case at hand are quite different from the facts and the circumstances of the cases referred in the decisions cited by the learned advocate for the Union, with respect, I am of the view that the said decisions have no direct application to this case.

From the materials on record, it is found that the demand of the union for regularization/absorption of the canteen workers is not justified. Hence, it is ordered.

ORDER

The demand of Lal Zanda Coal Mines Mazdoor Union, Nagpur for regularization/absorption of 31 Canteen workers at Headquarters of WCL, Nagpur is legal and justified. The workers are not entitled to any relief.

J.P. Chand, Presiding Officer

नई दिल्ली, 8, फरवरी, 2012

का०आ० 890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डबल्यू सी० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार अधिनियम अधिकरण नागपुर के पंचाट (संदर्भ संख्या-32/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-02-2012 को प्राप्त हुआ था।

[सं० एल-22012/34/1993-आई आर (सी-II)

डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 890.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2002) of the Central Government Industrial-Tribunal-cum Labour Court, Nagpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 08.02.2012.

[No. L-22012/34/1993-IR(C-II)]

D.S.S SRINIVASARAO, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/32/2002

Date: 20.01.2012

Party No. 1 : The Authority Manager,

Saoner Mine No. 1, WCL, Saoner Project,
Tah: Saoner, Distt. Nagpur.

Versus

Party No. 2 : Shri Jageshwar S/o. Bhaiaji Bhute,
(Dead)

(a) Smt. Jaya W/o. Jageshwar Bhute

(b) Akshya J. Bhute S/o. Jageshwar Bhute
Age 10 years, student

(c) Amrata J. Bhute d/o Jageshwar Bhute
All are plot No. 5, Mahalgi nagar,/
Hudkeshwar Nagar, Nagpur.
Substituted as per order dated 23.02.2007

AWARD

(Dated: 20th January, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Jageshwar Bhute, for adjudication, as per letter No.L-22012/34/93-IR (C.II) dated 20.05.93, with the following schedule:—

"Whether the action of the management of Saoner Project of WCL in terminating the services of Shri Jageshwar S/o. Bhaiyaji Bhute w.e.f. 21/23.11.1989 is legal and justified? If not, to what relief the concerned workman is entitled?"

On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman. Shri Jageshwar Bhute, ("the workman" in short) filed his statement of claim and the management of the Saoner Project of WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim was that he joined as an apprentice electric fitter with the party no. 1 on 15.11.1976 and he worked as such, till 01.12.1977 and thereafter, he worked as a regular employee in the electric department of party no. 1 and discharged his duties satisfactorily and while he was on duty on 14.10.1988, he sustained injury on his right foot and he took treatment in the dispensary of party no. 1 on 14th and 15th October, 1988 and as he was not cured, he

left Saoner to take treatment from a private doctor at Nagpur and he sent information to party no. 1, by sending medical certificates dated 19.10.1988 and 17.10.1988, in support of the fact of his undertaking treatment from the private doctor at Nagpur and he also requested the party no. 1 to treat the period of his absence as sick leave, by submitting an application and doctor P. R. Bhasme, as per the medical certificate dated 20.04.1989 advised him to take rest for two months and he also sent the said certificate to party no. 1 and he was not fit to resume his duties till 25.11.1989 and he was declared fit *w.e.f.* 26.11.1989, as per the fitness certificate given by doctor D.K. Kadasne and the party no. 1 without taking into consideration about the intimation sent by him, served a charge sheet on him on 01.04.1989 and he submitted his explanation on 17.04.89 alongwith the medical certificates and the party no.1 did not consider his explanation and the medical certificates submitted by him in support of his illness and all of a sudden, served the order of termination dated 21.11.1989 without holding any departmental enquiry, which was against the principles of natural justice. It was the further case of the workman that during the proceedings before the ALC (C), Nagpur, he came to know that the party no. 1 held an *ex parte* enquiry against him and no intimation or notice of the enquiry was served on him and he was also informed orally about the enquiry being conducted by the enquiry officer, Shri R. Bharadwaj and he preferred an appeal to the General Manager, WCL, Nagpur Area on 06.01.1990 against the order of termination and the appellate authority did not consider the appeal and *vide* letter dated 30.08.1991/ 30.09.1991 intimated him that the appeal for reinstatement cannot be considered and the charges leveled against him were baseless and the order of termination is bad in law. It was also pleaded by the workman that the party no. 1 committed grave illegality and irregularity and acted against the principles of natural justice by conducting an *ex parte* enquiry, without informing him the date and place of the enquiry and before the order of termination of services, no show cause notice was issued to him and the punishment is neither just nor proportionate to the misconduct and therefore he is entitled for reinstatement in service with continuity and full back wages.

3. It is necessary to mention here that during the pendency of the reference, the workman died and as such, his legal heirs namely, Smt. Jaya Jageshwar Bhute, Akshay Jageshwar Bhute and Amruta Jageshwar Bhute were substituted.

4. The party no. 1 in its written statement has pleaded *inter-alia* that since the appointment of the workman, he was in habit of remaining regularly absent from his duty, without permission or leave and he remained continuously absent, without any prior permission or approval, from 14.10.1988 to 01.04.1989, for about 7 months and due to his continues absence, management had to face all sort of difficulties in the electrical department and as the act of

continues absence amounted to misconduct, in terms of standing orders under which, the services of the workman were governed, charge sheet dated 01.04.1989 was served on him and the workman was asked to give detailed explanation for remaining absent from duty without permission or approval and the workman submitted his explanation to the charge sheet on 17.04.1989 stating the charges to be baseless and that he was injured while on duty on 14.10.1988 and he was treated at the dispensary at Saoner on 14.10.1988 and 15.10.1988 and as he did not recover from the injury, he went to Nagpur and was under the treatment of a private doctor and the Manager of Saoner Project, *vide* his letter dated 13.05.1989, asked the workman to report himself at Walni hospital immedately on receipt of the letter, as the reply given by him on 17.04.1989 was found not to be correct and the certificate given by him was from a private doctor, but the workman did not give any reply to the said letter and management has provided full medical aid free of cost to the employees and their entire family members and it is not understood as to how the workman consulted a private doctor, without availing the free medical aid as provided by the management and the workman was cautioned by letter dated 13.05.1989 and was asked to report at Walni hospital of WCL and he was intimated that in case of his failure to report at the afore stated hospital, action would be taken against him for unauthorized absence and as the workman did not comply to the above letter, the management had no other alternative than to initiate disciplinary action against him and Shri R. Bharadwaj, senior personal officer, Saoner Project was appointed as the enquiry officer and Shri Bhaskar Reddy, under manager was appointed as the management representative and the enquiry officer intimated the workman regarding the sitting of the enquiry and the date fixed for the enquiry and to appear on 25.07.1989 at 4.00 PM, but the workman did not turn up for enquiry, so the enquiry was adjourned to 30.08.1989 and the said date was also intimated to the workman, however, on 30.08.1989 also, the workman did not appear before the enquiry officer and the dates of the enquiry were intimated to the workman by register letter in his residential address as shown in form 'B' register of the Company and the date of the enquiry was fixed to 10.11.1989 and information regarding the same was also sent to the workman by register post and notice regarding such date of the enquiry was also published in the local newspaper, Navabharat, a Hindi daily on 31.10.1989 and inspite of the same, as the workman did not appear on 10.11.1989 before the enquiry officer, the enquiry officer was compelled to proceed with the enquiry *ex-parte* against the workman and the enquiry officer submitted his report on 18.11.1989, holding the charges leveled against the workman to have been proved and getting the enquiry report, the Sub Area Manager of Saoner Project recommendation to impose the punishment of dismissal from service to the workman and on the recommended of the Sub Area Manager, the Manager, of Saoner mines no. 1

vide letter dated 21/23.11.1989 passed the order of dismissal with immediate effect. It is further pleaded by the party no. 1 that its action in dismissing the workman from services is just, proper and legal and the punishment imposed against is proportionate to the misconduct proved against him in a properly conducted departmental enquiry and the workman is not entitled for any relief.

5. As this is a case of termination of the services of the workman after holding a departmental enquiry, the validity of the departmental enquiry was taken for consideration as a preliminary issue and *vide* order dated 28.07.2006, the enquiry was held to be against the principles of natural justice and the enquiry is vitiated, on the ground that the workman was not offered any opportunity for explaining and making submission on the report of the enquiry officer and it was necessary in the interest of natural justice to give a notice to the workman along with the copy of report of the enquiry officer, calling for his remarks on the same, which was obligatory.

6. The party no. 1 filed an application for review of the order passed on V.D.E., but the said application was rejected by this Tribunal on 01.12.2006.

7. The party no. 1 challenged the order dated 01.12.2006 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in WP No. 6449/2006 and the Hon'ble Court *vide* order dated 10.09.2009, set aside the order dated 01.12.2006 and directed for disposal of the case as expeditiously as possible. It is necessary to mention here that the Hon'ble Court accepted the submissions made on behalf of the party No. 1 that as the workman had already expired, the only course left open is to proceed on merits of the matter.

In view of the directions of the Hon'ble High Court, the case proceeded for decision on merit. However, the legal representative of the deceased workman did not appear in the case of contest the same.

8. Perused the record. It had been admitted by the deceased workman that he had remained absent from 14.10.1988 to 01.04.1989. However, it was the case of the workman that during the said period, he was under the treatment of a private doctor for the treatment of the injury sustained by him on his right foot on 14.10.1988 while on duty. However, on perusal of the medical certificates produced by the workman in support of such claim, it is found that the certificates had been obtained by him from different doctors for suffering for different diseases. The certificate dated 20.04.1989 issued by doctor P.R. Bhasme shows that the workman was under his treatment from 16.10.1988 for suffering from Ameobic Hepatitis. The certificate dated 28.08.1989 given by doctor C.N. Mandlekar shows that the workman was under his treatment from 28.08.1989 for chronic bronchitis, amebic colitis, and anaemia. It is also found from the documents

that the workman was directed to present himself at Walni hospital of party No. 1 for his medical examination, but he did not appear for such examination. It appears from the documents that the plea taken by workman regarding his illness for remaining absent is not true and it is clear that he remained unauthorized absent for a period of about seven months, without prior permission or sanction of leave, which amounts to misconduct. The punishment imposed against the workman, therefore, cannot be said to be shockingly disproportionate. Hence, there is no scope to interfere with the punishment. Hence, it is ordered:—

ORDER

The action of the management of Saoner Project of WCL in terminating the services of Shri Jageshwar S/o. Bhaiyaji Bute *w.e.f.* 21/23.11.1989 is legal and justified. Neither the workman nor his legal representatives are entitled for any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

का०आ० 891.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एच.ए.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1, मुम्बई के पंचाट (संदर्भ संख्या 35/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/02/2012 को प्राप्त हुआ था।

[(सं एल-42012/102/2005-आई आर (सी एम-II)]
डी०एस०एम० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 8th February,

S.O. 891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 35/2006 of the *Cent. Govt. Indus. Tribunal-cum-Labour Court No 1, Mumbai* as shown in the Annexure, in the industrial dispute between the management of *Hindustan Aeronautics Limited*, and their workmen, received by the Central Government on 08/02/2012

[No. L-42012/102/2005-IR(CM-II)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

JUSTICE G.S. SARAF
Presiding Officer

REFERENCE NO. CGIT-1/35 OF 2006

Parties : Employers in relation to the management of Hindustan Aeronautics Ltd.

And

Their Workman (Dattaraya V. Jadhav)

APPEARANCES:

For the Management : Shri E.S. Asokan, Adv.

For the workman : Shri J.P. Sawant, Adv.

State : Maharashtra

Mumbai, dated the 23rd day of January 2012.

AWARD

1. In exercise of powers conferred under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

Whether the action of the management of HAL in terminating the services of Sh. Dattaraya V. Jadhav *w.e.f.* 21.2.1989 is legal and justified? If not, to what relief is the workman entitled?

2. According to the statement of claim the second party workman joined the first party company *w.e.f.* 25.4.1979. The services of the second party were illegally terminated without following due process of law. At the time of his termination the second party was working as Mechanic 'A' in the Taste Stand Maintenance Department (666 shop). According to the statement of claim as his responsibility increased he was required to work more with the chemical process as a result of which he started suffering from problems of breathing and lungs. Somewhere in the month of December 1988 the second party workman was not feeling well and, therefore, he could not attend his duties. He underwent medical treatment under Dr. Avhad from 14.12.1988 to 9.1.1989. The second party workman forwarded the certificate to officer of the first party company. His doctor advised him complete bed rest and, therefore, he could not report for duty. The first party issued a notice to the second party workman for abandonment of services dt. 2.3. 1989 and directed the second party workman to report to the Personnel Officer of the first party by 11.3.1989 or explain his absence. The second party was not in a position to report for duty on account of his sickness and he sent a letter dt. 11.3.1989 informing the concerned authority that he was not available and, therefore, was not in a position to join his duties up to 8.4.1989. The first party, however, terminated the services of the second party workman *w.e.f.* 21.2.1989 *vide* letter dt. 17.3.1989. According to the statement of claim the first party did not exercise the powers under clause 18(ii) of the Certified Standing Orders in a bona fide manner. The first party ought to have granted opportunity of hearing to the second party workman. The first party ought to have conducted enquiry after issuing a charge sheet. The first party did not give one month's notice pay to the second

party workman in lieu of notice before terminating his services. The second party workman filed a complaint of unfair labour practise before Labour Court, Nasik. After hearing both the parties the Labour Court held *vide* judgement dated 2.1.1998 that the complaint was not maintainable on the ground of lack of jurisdiction. The second party workman filed a review application before the Labour Court but the same was dismissed by order dt. 23.6.2000. The second party workman than raised the dispute before Regional Labour Commissioner on 1.10.2000. Since there was no response from the Regional Labour Commissioner the second party workman approached the Bombay High Court by filing a writ petition No. 4089 of 2004 wherein honourable High Court gave appropriate directions to the Regional Labour Commissioner. After the directions the Regional Labour Commissioner started conciliation proceedings. No settlement could be arrived at and, therefore, the Regional Labour Commissioner forwarded his failure report to the Government. Since there was no response from the Govt. of India the second party workman again had to approach the High Court by filing contempt petition No. 302 of 2006. The High Court issued notice to the respondents but in the meantime the order of reference was issued. The second party workman has prayed that the first party company be directed to reinstate him with full back wages and continuity of service *w.e.f.* 21.2.1989.

3. According to the written statement the second party workman did not attend his duties *w.e.f.* 29.12.1988 without any prior permission/information or application of whatsoever nature. The workman sent an application with a medical certificate of Dr. D.V. Avhad, a private medical practitioner. The workman was then advised to report to HAL Hospital for medical check up *vide* letter dt. 4.1.1989 of the first party company. The workman did not report to HAL Hospital and instead sent a medical certificate issued on 23.1.1989 by Civil Surgeon, Nasik recommending leave from 11.1.1989 to 9.2.1989. The first party company accepted the above medical certificate. But the workman did not report for duty on 10.2.1989 and continued to remain absent unauthorisedly. A notice for voluntary abandonment of services was issued to the workman on 2.3.1989 and he was advised to report for duty on 11.3.1989 and he was also directed to explain his absence as per clause 18 (ii) of Certified Standing Orders. The first party company waited till 17.3.1989. On 17.3.1989 the first party company issued an office order informing the voluntary abandonment of service. According to the written statement the Certified Standing Orders are in the nature of statute and as such if the termination is under the Certified Standing Orders then no enquiry is necessary. According to the written statement the second party workman was in the habit of remaining absent unauthorisedly and for that he was chargesheeted and given warning but without any improvement. The second party workman engaged himself in private business.

The second party workman has remained absent for 1 day in 1983, for 27 days in 1984, for 2 days in 1985, for 56 days in 1986, for 18 days in 1987, for 69 days in 1988 for 31 days in 1989. The first party company has, therefore, stated that the voluntary abandonment notice dt. 17.3.1989 is legal, proper and valid and the punishment awarded to the second party workman is just and adequate.

4. The second party workman has filed this affidavit and he has been cross-examined by learned counsel for the first party. The first party has filed affidavit of Dilip Saindanvise and he has been cross-examined by learned counsel for the second party workman.

5. Heard learned counsels for the parties.

6. Clause 18 (ii) of the Standing Orders applicable to the second party workman runs as under:

If a workman remains absent for more than 10 days and/or absents himself beyond the period of leave originally granted, or subsequently extended, he shall be deemed to have voluntarily abandoned unless he returns with 8 days of the expiry of the notice of termination and explains to the satisfaction of the Management the reasons for his inability to return before the expiry of the notice.

It is well settled that the vires of the above provisions cannot be considered by this Tribunal as the exclusive power for such purpose is vested under the Constitution only in the Courts exercising powers of judicial review under Article 32.226 of the Constitution.

7. While keeping the above legal position in mind this Tribunal has to determine whether the action of the management of HAL in terminating the services of the second party workman *w.e.f.* 21.2.1989 is legal and justified.

8. The second party workman remained absent *w.e.f.* 29.12.1988 and he sent an application with a medical certificate. The second party workman was advised to report to HAL hospital for medical check up but he failed to report and again sent a medical certificate on 23.1.1989 recommending leave from 11.1.1989 to 9.2.1989. The first party company accepted the medical certificate. However, even after the expiry of the medical certificate period the workman did not report for duty on 10.2.1989 and continued to remain absent unauthorisedly. A notice for voluntary abandonment of services was then issued to the workman on 2.3.1989 and he was asked to report for duty by 11.3.1989 and he was also directed to give explanation regarding his unauthorised absence. The notice is Ex. M-9. In para No. 3 of his affidavit, the second party workman admits that notice Ex.M-9 was issued to him. The second party workman neither returned with 8 days from the date of notice nor he offered any explanation stating the reasons for his inability to return. The first party company still waited and then only on 17.3.1989 passed an order that the name

of the second party workman be struck off the rolls *w.e.f.* 21.2.1989 due to voluntary abandonment of services. It is clear the first party company has acted in pursuance of clause 18(ii) of the Standing Orders.

9. It has been stated in the written statement that the second party workman remained absent unauthorisedly during the period 1982 to 1989 as under:

1983	01 day.
1984	27 days.
1985	02 days.
1986	56 days.
1987	18 days.
1988	69 days.
1989	31 days.

The second party workman has admitted in his cross-examination that he remained absent for 31 days in 1989, for 16 days in 1988 for 18 days in 1987, for 56 days in 1986, for 2 days in 1985 and for 27 days in 1984. By the admission of the second party workman himself it is clear that the second party workman is in the habit of remaining absent unauthorisedly.

10. It is necessary that the employer must comply with the principles of natural justice but the observance of natural justice is not required to be stretched to the extent of requiring the employer to convene a disciplinary enquiry in such cases. What is required of the employer is to give a reasonable opportunity to the workman to report for work or, in the alternative, to explain his absence. In the present case the employer has done so. That apart it is manifestly clear that the case set up by the workman is not worthy of credence. There is no proof of the fact that the second party workman sent a letter dated 11.3.1989 in reply to the notice.

11. In the facts and circumstance of the case I am of the opinion that the action of the management of HAL in terminating the services of the second party workman is in accordance with clause 18 (ii) of the Standing Orders and the principles of natural justice.

12. Consequently, it is held that the action of the management of HAL in terminating the services of the second party workman is legal and justified.

Award is made accordingly.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

कांआ० 892.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईंसीएल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असंसोल के पंचाट (संदर्भ संख्या 13/ 2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-02-2012 को प्राप्त हुआ था।

[सं एल-22012/61/2009 आई आर (सी एम - II)]

डी०एस०एस०श्रीनिवास राव

डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 892.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.13/2010) of the **Central Government Industrial Tribunal-cum-Labour Court-1, ASANSOL**, as shown in the Annexure in the Industrial Dispute between the management of **Bankola Colliery of M/s. ECL**, and their workman, received by the Central Government on **08.02.2012**.

[No. L-22012/61/2009-IR(CM-II)]

D.S.S. SRINIVASA RAO

Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUMLABOUR COURT ASANSOL.

PRESENT Sri Kishori Ram

Presiding Officer/Link Officer

REFERENCE NO. 13 OF 2010

PARTIES The management of Bankola Colliery of M/s. ECL.

V/s.

Their Workman

REPRESENTATIVES

For the management None

For the union (Workman) None

Industry Coal State West Bengal
Dated the 06.01.12

AWARD

In exercise of power conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its letter No. L-22012/61/2009-IR(CM-II) dated 23.02.10 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Bankola Colliery under Bankola Area of M/s. ECL., in dismissing

Sri Nirmal Kr. Rajak *w.e.f.* 07.07.2003 is legal and justified? To what relief is the workman concerned entitled?”

Having received the Order No. L-22012/61/2009-IR(CM-II) dated 23.02.10 of the above said reference from the Govt. of India Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 13 of 2010 was registered on 18.03.10 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statement along with the relevant documents and a list of witnesses in support of their claims in pursuance of the said order notices by the registered post were sent to the parties concerned.

None of the parties present Perused the case record, I find a petition filed on 17.03.11 (Later on) by workman, Nirmal Kumar Rajak for withdrawal of the case for amicable settlement. Since the workman himself or the Union appears disinterested to proceed with the case hence the case is closed as there is no dispute. Accordingly, it is hereby ordered.

ORDER

Let an “Award” be and the same is passed as no dispute existing. Send the copies of the order to the Govt. of India Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of

Kishori Ram

Presiding Officer/Link Officer

नई दिल्ली, 8 फरवरी, 2012

का०आ० 893.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 45/ 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-02-2012 को प्राप्त हुआ था।

[सं एल-22012/142/2004 आई आर (सी०एम० - II)]

डी०एस०एस०एस० राव

डेस्क अधिकारी

New Delhi, the 18th February, 2012

S.O. 893.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 45/2005 of the **Cent. Govt. Indus. Tribunal-Cum-Labour Court, NAGPUR** as shown in the Annexure, in the industrial dispute between the management of **Western Coalfield Limited**, and their workmen, received by the Central Government on **08/02/2012**

[No. L-22012/142/2004- IR(CM-II)]

D.S.S. Srinivasa Rao, Desk Officer

ANNEXURE**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/45/2005 Date: 24.01.2012.

Party No.1 : The General Manager,
WCL of Kanhan Area, PO: Parasia,
Distt. Chhindwara, (MP)

Versus

Party No.2 : The General Secretary,
M.P.K.M.U. (Lalzanda AIFTU),
PO: Gurhi, Distt. Chhindwara, (MP)
480551

AWARD

(Dated: 24th January, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Sujjan Atmaj Javed, for adjudication, as per letter **No. L-22012/142/2004-IR (CM-II) dated 13.05.2005**, with the following schedule:—

"Whether the action of the General Manager, Western Coalfields Limited of Pench Area, Parasia, Distt. Chhindwara (MP) in retiring Shri Sujjan, S/o. Javed Ex. Loader, Newton/Ganapati Mine on 30.06.2001 on the basis of his date of birth as 01.07.1941 and by ignoring the date of birth as 01.07.1955 is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "M.P.K.M.U. (Lalzanda AIFTU)", ("the union" in short) filed the statement of claim on behalf of the workman, Sujjan S/o, Javed. ("the workman" in short) and the management of the WCL, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was appointed in Newton private coal mine as a underground Tub Loader on 27.12.1972 and after the nationalisation of the coal mines in 1974, he was brought under the party no. 1 and was absorbed permanently and his service record was clean and unblemished and in all his service records, his date of birth had been mentioned as 01.07.1955 and he is an illiterate person and he had never studied in any school and at the time of his appointment, the person who brought him for working in the colliery, on the basis of village records available in 1972, recorded his date of birth as 01.07.1955 and the same was carried out subsequently by the office of

the party no. 1 and the said date of birth was entered into the service records as well as in the record of the coal mine provident fund and as per the agreement between the management and JBCCI in the year 1980-81, the party no. 1 called applications from the workers, whose date of birth was not properly recorded and he did not submit any application as his date of birth was recorded as 01.07.1955 and in the year 1997, he suddenly became ill and at that time, the Deputy Personnel Manager of Chhindwara Sub Area issued a letter mentioning his date of birth as 01.07.1955 and from the said facts, it is clear that in the records maintained by the party no. 1 his date of birth was mentioned as 01.07.1955 and in the records of the coalmines provident fund also his date of birth was recorded as 01/07/1955, but suddenly, party no. 1 through mines superintendent/Manager of Thisgora underground mine issued a letter on 10.01.2001, intimating him of his going to complete the age of 60 years on 30.06.2001 and that he would be retired on attaining the age of superannuation and he was also asked to fill up the required forms for getting the amount of provident fund and gratuity and he challenged the said order before the Hon'ble High Court of Madhya Pradesh at Jabalpur by filing write petition no. 2198 of 2001, but the Hon'ble High Court dismissed the petition with liberty to raise an industrial dispute *vide* order date 02.08.2002 and accordingly, he raised the industrial dispute before the ALC, Chhindwara and the reference is required to be answered in his favour, as the action of the party no. 1 is arbitrary and based on fake and fabricated documents. It is also pleaded by the workman that at no point of time, the party no. 1 informed him or the officer of coalmines provident fund intimating about the wrong mentioning of his date of birth in Form 'A' dated 09.12.1997 and as such, the party no. 1 is estopped from changing the date of birth and the order issued by the party on 10.01.2001, retiring him *w.e.f.* 30.06.2001 is illegal.

The workman has prayed to declare the letter issued by party no. 1 on 10.01.2001 as illegal and that he is entitled to continue in service in his post *w.e.f.* 01.07.2001 with continuity and full back wages till his retirement *i.e.* 30.06.2015.

The party no. 1 in its written statement has pleaded *inter alia* that the workman was initially appointed in the year 1972 by the private management of Newton Chikli colliery and the said colliery was taken over by the coal mines, authority Ltd., a Govt. of India company by virtue of coal mines Nationalisation Act and from Newton Chikli colliery, he was transferred to Chinda colliery, from where, he was transferred to Theshora mine and all the said mines are under the control of General Manager, Pench Area and as per section 48 of Mines Act read with Rules 51, 77 and 77 (A) (2) of the Mines Rules, a register of employment known as "Form B" register is required to be maintained by

the management of each colliery and the particulars of the employees are recorded in the "B Form" register, based on the declaration given by the employees and in the "Form B" registers of the workman, the date of birth of the workman has been recorded as 01.07.1941 and after coming into force the NCWA, management as per instruction no.76, issued service excerpts of the workman in 1987, declaring his date of birth as 01.07.1941 and inviting objection if any and the workman did not raise objection what so ever and the "Form B" register bear the thumb impression of the workman and the service excerpts was given to the workman in triplicate on 20.07.1987 and the workman kept the original with him and returned the carbon copy by affixing his thumb impression without raising any objection and as the age of superannuation for the coalmines employees was 60 years, the workman was issued with the notice intimating him the date of his retirement to be 30.06.2001 and when the notice of retirement was served on the workman, he submitted the manipulated service excerpts in which, in the column of date of birth, the year '41' was erased and over written as 55 and in the column of comments, "his date of birth is incorrect and it should be corrected" was mentioned, which clearly indicate that the workman tried to forge the documents and take advantage of the same and the workman at no point of time had raised any objection with regard to the entry of his date of birth as 01.07.1941 in all the records of the management and he was rightly retired *w.e.f.* 30.06.2001 and there is no discrepancies in the record maintained by the management and the claim made by the workman is false and cannot be sustained and writ petition no. 298/2001 filed by the workman was disposed by the Hon'ble Court on merits and the petition was dismissed with liberty to the workman to raise an industrial dispute, if so advised and after the judgment of the Hon'ble High Court, no claim of the workman survives and the reference has been made by the Government without application of mind and has no merit and the dispute was not raised by the workman at appropriate time and was raised only after the receipt of the retirement notice and such a belated claim is not maintainable.

It is further placed by the party no. 1 that the statement of claim has been signed by the workman and not by the General Secretary of the union and as the workman was not a party to the dispute, the statement of claim is not maintainable and in the service records of Newton Chikli colliery, the date of birth of the workman was recorded as 01.07.1941 and not 01.07.1955, as claimed by the workman and the workman had accepted the same and put his thumb impression in token of acceptance of the entries made there in and the documents in respect of CMPF records were manipulated and letter dated 09.02.1997 is a proforma, duly filled in by the workman for his medical examination for declaring him unfit and the concerned officer signed the said document as a token of receipt of the same and in that proforma also, the date of superannuation was mentioned as 2001 and the workman is not entitled for any relief.

5. Parties have adduced oral evidence besides placing reliance on documentary evidence. The workman, who has examined himself as a witness has reiterated the facts mentioned in his statement of claim in his examination-in-chief, which is on affidavit. However, in his cross-examination, the workman has admitted that he is illiterate and he does not know the contents of his affidavit and his age as mentioned in the affidavit and he has not filed any certificate showing his date of birth or his age and he had not brought any certificate from his native village about his age or date of birth and he does not know as to what date of birth was mentioned in the records of the management. The workman has admitted that Ext. M-IV is the "Form B" register in respect of himself and the same bears his thumb impression and Exts. M-V and M-VI are also his "Form B" registers having his photographs and thumb impression and in all the said registers, his date of birth has been mentioned as 01.07.1941. The workman has also admitted that in 1987, he was informed about his date of birth and was asked if he had any objection about the entries and he did not challenge his date of birth and ext. M-VII is the letter calling for his objection.

6. One Samir Barla, the Senior Personnel Officer has been examined as a witness by the party no. 1. The witness in his evidence has reiterated the facts mentioned by party no. 1 in the written statement. Party no. 1 has also examined Mohd. Latif Qureshi, an employee of the office of CMPF, as MW.2 and he has stated that the date of birth mentioned in the Form 'A' has been tampered with and mentioned as 01.07.1955.

The evidence of the two witnesses examined on behalf of the party no. 1 has not been shaken in the cross-examination.

7. At the time of argument, it was submitted by the learned advocate for the workman that the initial appointment of the workman was in a private colliery and at the time of such appointment, the date of birth of the workman was recorded as 01.07.1955 in the records of the management and specifically in Ext. W-5, the date of birth of the workman has been mentioned as 01.07.1955 and in the document of the office of the CMPF, Ext. M-14 also, the date of birth of the workman has been mentioned as 01.07.1955 and it is also clear from the evidence of the workman and the witnesses for the party no. 1 that the date of birth of the workman is 01.07.1955 and as such, the action of party no. 1 in retiring the workman *w.e.f.* 30.06.2001, holding his date of birth as 01.07.1941 is illegal and unjustified and therefore, the workman is entitled for reinstatement in service with continuity and full back wages and to continue in service till the date of his actual superannuation.

8. Per contra, it was argued by the learned advocate for the management that the date of birth of the workman was never recorded as 01.07.1955 in the records of the management and in the statutory registers *i.e.* "Form B"

register maintained by the private colliery as well as the party no. 1 the date of birth of the workman has been recorded as 01.07.1941 and in 1987, the service excerpts of the workman was supplied to the workman as per instruction no. 76, mentioning his date of birth as 01.07.1941 and asking him to raise objection in case of any mistake in regard to the particulars mentioned therein and the workman did not raise any objection and submitted the duplicate copy of the service excerpts putting his thumb impression on the same and the workman has admitted in his evidence about his date of birth to have been mentioned as 01.07.1941 in the three "Form B" registers, Exts. M-IV, V and VI and that he did not raise any objection regarding his date of birth as mentioned in the service excerpts and ext. W-V does not have any evidentiary value, as the same is an application filed by the workman himself for his medical examination to declare him unfit and in that application also, the year of retirement of the workman has been mentioned as 2001 and the signature of the officer of the party no. 1 on the said document is in token of the receipt of the application and after service of the retirement notice, the workman submitted ext. M-IX, which clearly shows that the date of birth has been tampered with and the year "41" has been made as "55" and the date of birth of the workman mentioned in "Form A" of CMPF office has also been tampered with and has been made as 01.07.1955, which is clear from ext. M-XIV, the form A and so also form the evidence of MW2, Mohd. Latif Qureshi and the retirement of the workman on superannuation on 30.06.2001 is completely legal and justified. It was also submitted that the workman did not raise any objection about his date of birth during the period of service, but raised objection, only after the issuance of the retirement notice and such belated objection regarding the date of birth cannot be entertained.

In support of the last contention, the learned advocate for the management placed reliance on the decisions reported in 2001 (1) MPLJ (SC)-302 (State of Haryana Vs. Satish Kumar Mittal), (1995) 4 SCC-172 (Burn Standard Co. Ltd. Vs. Dinabandhu Majumdar) and AIR 2001 SC 72 (G.M. Bharat Cooking Coal Ltd. Vs. Shub Kumar).

9. Perused the record including the evidence adduced by the parties and considered the submissions made by the learned advocates for the parties. Though the workman has claimed that in the records of the party no. 1, his date of birth has been mentioned as 01.07.1955 and at the time of the initial appointment, his date of birth was mentioned as 01.07.1955, on the basis of the village records, it is found that in the records of the party no. 1, the date of birth of the workman has actually been mentioned as 01.07.1941 and not as 01.07.1955. In the statutory "Form B" register maintained by the private colliery also, the date of birth of the workman has been mentioned as 01.07.1941. The workman in his evidence has admitted about the same. It is also found from the evidence on record and Ext. M-VII that the service excerpts of the workman had been sup-

plied to him in 1987, mentioning his date of birth as 01.07.1941 there in and the workman did not raise any objection in respect of his date of birth and returned the copy of the same to the party no. 1, after putting his thumb impression on the same. The workman also did not raise any objection during the tenure of his service and he raised objection, only when the retirement notice was served on him.

The workman has placed reliance on ext. W-V and exts. M-XI and M-XIV in support of his claim that his date of birth is 01.07.1955. On perusal of ext. W-V, it is found that the same is not a document given by the management, but the same is an application in the proforma, filed by the workman for medical examination to declare him unfit. In the said application, against column 12, which is meant for mentioning "the name and designation of official authorized to receive the application and his signature", the signature and seal of the officer are there, which clearly show that such signature and seal were affixed, in token of receipt of the application. Moreover, in Ext. W-V itself, the year of retirement of the workman has been mentioned as 2001. Hence, Ext W-V has no evidentiary value. It is also found from exts. M-IX and M-XIV that the date of birth of the workman has been tampered with in those documents. MW2 has also stated about tampering of the date of birth of the workman in Ext. M-XIV. Hence, the documents are of no help to the workman. The workman has not produced any village record in support of his date of birth. Hence, it is found that there is no reliable evidence on record to hold that the date of birth of the workman is 01.07.1955. Hence, it is held that the action of the party no. 1 in retiring the workman *w.e.f.* 30.06.2001 is valid and justified. Therefore, it is ordered:—

ORDER

The action of the General Manager, Western Coalfields Limited of Pench Area, Parasia, Distt. Chhindwara (MP) in retiring Shri Sujan, S/o. Javed Ex. Loader, Newton/Ganapati Mine on 30.06.2001 on the basis of his date of birth as 01.07.1941 and by ignoring the date of birth as 01.07.1955 is legal and justified. The workman is not entitled to any relief.

J.P. Chand, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

कांआ० 894.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डबल्यूसीएल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, नागपुर के पंचाट(संदर्भ संख्या 119/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/02/2012 को प्राप्त हुआ था।

[सं. एल-22012/201/2002-आई आर (सीएम-II)]
डी०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 119/2003 of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR* as shown in the Annexure, in the industrial dispute between the management of *Western Coalfields Limited of Kanhan Area*, and their workmen, received by the Central Government on 08/02/2012.

[No.L-22012/201/2002-IR(CM-II)]
D.S.S. Srinivasa Rao, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/119/2003 Dated: 24.01.2012

Party No. 1 : The General Manager,
WCL of Kanhan Area, Po: Dungaria,
Distt. Chhindwara, (MP)

Versus

Party No. 2 : The General Secretary,
M.P.K.M.U. (Lalzanda AIFTU),
Po: Gurhi, Distt. Chhindwara, (MP),

AWARD

(Dated: 24th January, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Nanak S/o Sh. Tapsi, for adjudication, as per letter No. L-22012/201/2002-IR (CM-II) dated 23.04.2003, with the following schedule:—

"Whether the action of the management of Ambara Colliery of WCL Kanhan Area Distt. Chhindwara (MP) in decreasing the wages of Sh. Nanak S/o Shri Tapsi, Tub Loader Ambara Colliery is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "M.P.K.M.U. (Lalzanda AIFTU)", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Nanak, ("the

workman" in short) and the management of the WCL, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was appointed on 11.04.1976 at Ambara Colliery as a Tub Loader group V-A with party no.1 and his service record is clean and unblemished and due to deterioration of his health condition, he was medically examined at Area hospital, Kanhan and at Nagpur Medical college and it was recommended by the medical authorities to provide him job on surface and party No. 1 on the recommendation of the Apex Medical Board and approval of the competent authority, issued orders dated 25.09.1995 and 04.11.1995 in his favour to work as "Time rated grade H" for the period from 26.09.1995 to 26.10.1995 and 5.11.1995 to 20.11.1995 respectively and accordingly, he worked as a Time rated grade H worker for the said periods and continued to work as a Time rated grade H worker thereafter also and though he was provided with alternative surface job, his pay was protected and he was paid the salary of original group V-A of the Tub Loader but suddenly, the party No. 1 *vide* letter dated 31.05.1999 intimated him that as he was working in the post of "Time rated group H" on his own wish, he would be paid the mid point basic pay of Rs. 1923/- per month of the same category, from the month of May, 1999 as per the agreement dated 31.10.1995 and he made a representation on 14.08.1999 for protection of his pay, but the same was turned down by party No. 1, *vide* communication dated 24/27.08.1999, on the ground that he himself had applied for alternative light work and the matter did not fall under the category of IOD and as such, protection of pay was not possible, so be approached the ALC (C), Chhindwara and before the ALC, party No. 1 stated that the action of paying at the mid point wages of time rated grade H, after providing alternative work permanently was justified, in view of the Settlement arrived at between management and RKKMS (INTUC) on 31.10.1995 and it was replied by him that the same understanding had no legal force and was not binding on all the workers of the industry and the procedure of fixation of mid point wage was arbitrary and was introduced only in WCL and not in Coal India to which WCL is a subsidiary and also not in other subsidiaries of Coal India Ltd. and as the conciliation procedure failed, failure report was submitted by the ALC to the Central Government and ultimately the reference was made to the Tribunal for adjudication. It is further pleaded by the workman that the action of the party No. 1 to pay mid point of basic pay of the category in which, he was given alternative surface job since May, 1990 is arbitrary and illegal and he was provided with alternative job on surface on the recommendation of the Apex Medical Board and the claim of the party No. 1 that he is working in the category of "Time rated H" by his own choice does not hold good and his pay was protected from the date of his doing alternative job till the issuance of the letter dated 31.05.1999, for a long span of

almost four years and the action of reduction of his pay was made without giving any opportunity to him of being heard, in violation of the principles of natural justice and the understanding between management and RKKMS (INTUC) had no legal force and as such, the same is not binding on all the workers of the industry and the action of the party No. 1 to pay the mid point basic pay *w.e.f.* May 1999 is contrary to the settled principles of natural justice and is also against the ratio laid down by the Hon'ble Apex Court.

The workman has prayed to declare the order dated 31.05.1999 passed by the party No. 1 as illegal as to quash and set aside the same and to protect his pay of Tub Loader group V-A and to pay the difference of wages since May, 1999.

3. The Party No. 1 in its written statement has pleaded *inter-alia* that the service conditions of the employees working in the coal industry are governed by various settlements, generally known as NCWA and ACWAs contain job nomenclature and cadre scheme etc. and the employees are entitled to the wages against the post they are appointed and wages are paid on the job done by them and the workman was initially appointed on 11.04.1975 as Tub Loader piece rated in group V-A at Ambara Colliery and as per chapter IV of Mines Rules, which deals with medical examination of coal mines workers, the workman was subjected to medical examination and the Medical Board after examination of the workman advised for alternative job and he was also referred for medical examination by Apex Medical Board and the said Board after examination of the workman recommended for alternative job on surface and based on the recommendations of the Medical Board and on the personal request of the workman, the management provided the workman alternative job on surface and as per his option, the workman was given alternative job on surface and subsequently, the workman opted for time rated job on surface as per his option, he was given the job of time rated on surface in grade H and as the workman changed his category from Tub Loader to time rated in grade H, his pay was fixed according to the guidelines of the settlement arrived at between the management and RKKMS union on 31.10.1995 and the workman never raised the dispute claiming pay protection in group V-A of Tub Loader, while working on the time rated on surface and as the workman opted for alternative job, he has no right to claim pay protection and the demand is unjustified and if pay protection is given to the workman, similarly situated other employees will claim pay protection and will ask for alternative job on surface and as the demand of the workman is not justified, he is not entitled for any relief.

4. Besides placing reliance on documentary evidence, both the parties have adduced oral evidence in support of their respective claim. The workman has examined himself as a witness in support of his case. One Shri P.K. Tripathi, a deputy personnel manager of WCL has been examined as a witness on behalf of the party No. 1.

As all most all the facts are admitted by the parties, there is no necessity to refer to the oral evidence of the witnesses, who in their evidence have reiterated the facts mentioned in the statement of claim and written statement respectively.

5. It is the admitted case of the parties that the workman was working as a Tub Loader V-A and he was medically examined and recommended alternative work on surface. According to the party No. 1 not only due to the recommendation of the medical board, but also, due to the option of the workman, he was given the job of time rated grade H permanently and as such, his pay was fixed as per the provisions of the settlement dated 31.10.1995 reached by the management and RKKMS union. However, Party no. 1 has failed to produce any evidence to show that the workman opted for the job of time rated grade H. It is also clear from the documents that due to the recommendation of the Medical Board, the workman was given the alternative job on surface.

The party No. 1 has not pleaded anything that the settlement reached between the management and RKKMS union is binding to all the workers of WCL including the workman, who is admittedly a member of another union and not a member of RKKMS. There is also nothing on record to show that the settlement is binding to all the workers of WCL.

It is found from record that the pay of the workman was protected till the issuance of the letter dated 31.05.1999. The workman was not given any chance of hearing before his pay was reduced. Hence, the order of party No. 1 fixing the pay of the workman at mid point of time rated category H is unjustified. Hence, it is ordered:—

ORDER

The action of the management of Ambara Colliery of WCL Kanhan Area Distt. Chhindwara (MP) in decreasing the wages of Sh. Nanak S/o Sh. Tapsi, Tub Loader Ambara Colliery is illegal and unjustified. The workman is entitled for protection of his pay of Tub Loader group V-A. The workman is also entitled to get the difference of wages from May, 1999 till grant of wages of Tub Loader.

J.P. CHAND, Presiding Officer.

नई दिल्ली, दिनांक 08/02/2012

का०आ० 895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू० सौ० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध १ में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 79/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/02/2012 को प्राप्त हआ था।

[सं. एल-22012/2/2001-आईआर (सीएम-II)]

डी०एस०एस० श्रीनिवास राव डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 79/2004 of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR* as shown in the Annexure, in the industrial dispute between the management of *Damua Colliery of WCL*, and their workmen, received by the Central Government on 08/02/2012.

[No. L-22012/2/2001-IR (CM-II)]

D.S.S. Srinivasa Rao, Desk Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/79/2004

Date: 19.01.2012.

Party No. 1 : The Manager, Damun Colliery of WCL,
PO: Damua, Distt. Chhindwara, (M.P.)

Versus

Party No.2 : The President,
P.K.K.K.K. Sangh, PO: Damua,
Distt. Chhindwara (M.P.)

AWARD

(Dated: 19th January, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Krishna S/o. Sh. Shankar, for adjudication, as per letter **No. L-22012/2-2001-IR (C-II)** dated **13.08.2004**, with the following schedule:—

"Whether the action of the management of Damua Colliery of WCL in not allowing Shri Krishna S/o. Sh. Shankar, driller-cum-dresser of Damua Colliery to attend duties from 08.04.2000 to 15.09.2000 was legal

and justified? If not, to what relief the workman is entitled?".

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Krishna S/o. Sh. Shankar, ("the workman" in short) filed his statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman is that he was appointed in 1977 and worked as a driller-cum-dresser and on account of introduction of voluntary retirement scheme by the party no. 1, about four thousand employees of Kanhan Area took voluntary retirement and those posts were not filled up by part no. 1 and therefore, man power in every department in the Coal Mines of Kanhan Area decreased to such an extent that the party no. 1 had no control on the work process and in this process, his service conditions were changed in violation of the provision of section 9-A of the Act and he was forced to work as roof bolter alongwith driller-cum-dresser and he raised dispute before the Asstt. Labour Commissioner (Central), Chhindwara and the party no. 1 in its written statement had mentioned that he (workman) was ordered for making holes for roof stitching, which was beyond his duties and during the course of the conciliation proceedings, the party no. 1 in violation of the provisions of section 33(1)(a) of the Act, ordered him to make holes for roof stitching and on the complaint of the overman, his wages was not paid and on 20/12/2001, a warning letter alongwith denial to pay wages was given to him and he submitted his reply to the same on 21.12.2001 and prior to the above incident, he was ordered to work as a Trammer, *vide* order dated 06.06.1998, beyond his prescribed job and party no. 1 had issued charge sheets against him dated 14/16.10.1998 and 13.02.1999, on the allegations that he denied to perform the work of Timberman and also to work with roof bolter and the party no. 1 forcibly pressurized him to work as driller-cum-dresser, roof bolter and roof stitcher and as he denied to do so, he was forced to go back from the mine and his wages from 08.04.2000 to 15.09.2000 and for some other days were not paid. The workman has prayed to direct the party no. 1 to make payment of his wages for the days mentioned in his petition.

3. The party no. 1 in the written statement has pleaded *inter-alia* that the terms of the reference is incorrect, as the Government has decided that the workman was disallowed to perform his duty, though the workman had refused to perform to do the job and the reference is highly prejudicial to the interest of the management and the union has raised the same dispute before the conciliation forum and after hearing both the parties, the appropriate Government *vide* order dated 11.12.2001 refused to refer the dispute for adjudication, on the ground that, "It is reported that the workman was advised to attend the duties and w.e.f. 15.09.1990, he has attended the duties at Damua

Colliery of WCL and his is performing the duties of driller-cum-dresser regularly and following the instructions of his superiors of the mines. The contention of the union that he has been orally terminated from duty which is not correct and workman is not entitled to any wages for the period of absence from duty" and the union being aggrieved by the said order, filed writ petition no. 563/2002, before the Hon'ble High Court of M.P. at Jabalpur and thereafter, the Government referred the dispute for adjudication.

It is further pleaded by the party no. 1 that on 08.04.2000, the workman refused to obey the instructions of his superiors and did not perform his duty and as such, he was not paid the wages for that day on the principle of "no work no pay" and he also refused to work from 08.04.2000 to 15.09.2000 (wrongly mentioned as 19.05.2000 in the W.S.) as per the instructions of his superiors and there was no stoppage of work as alleged and as he did not work, he was not entitled for wages and the job of driller is to drill the holes, which he cannot refuse on the plea that the job of drilling holes for roof stitching is to be done by roof stitching crew and as the workman refused to obey the instructions of superior officers and refused to work, the workman is not entitled to wages on the basis of "no work no pay" and a false story has been put forward by the workman and as such, the workman is not entitled to any relief.

4. It is necessary to mention here that after filing of the statement of claim, the workman did not appear at all in the case and lastly the case proceeded ex parte against him.

5. It is well settled that if a party challenges the legality of any action, the burden lies upon him to prove the illegality of the action and if no evidence is produced, the party invoking the jurisdiction of the court must fail.

6. In this case, the workman, in the statement of claim has not made any pleadings as to whether he worked for the period from 08.04.2000 to 15.09.2000 or that he was not allowed to work for that period. The documents filed by him do not relate to the period from 08.04.2000 to 15.09.2000. The documents also do not show that the workman was asked to work as a roof bolter. Hence, the workman is not entitled to any relief.

7. It is also found that the schedule of reference has not been made properly. It is clear from the pleadings of the parties and the materials on record that the workman refused to work on many occasions and disobeyed the direction of his superiors. There is no evidence that management did not allow the workman to work from 08.04.2000 to 15.09.2000. Hence, it is ordered:

ORDER

**The reference is answered against the workman.
The workman is not entitled to any relief.**

J.P. Chand, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

का०आ० 896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डबल्यू०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 182/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/02/2012 को प्राप्त हुआ था।

[सं० एल-22012/291/1996-आई आर (सी-II)]
डॉ०एस०एस० श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 8th February, 2012

S.O. 896.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (*Ref. No 182/2002*) of the *Central Government Industrial Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **WCL** and their workman, which was received by the Central Government on 08/02/2012.

[No. L-22012/291/1996-IR (C-II)]
D.S.S. Srinivasa Rao, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/182/2002 Date: 19.01.2012.

Party No. 1 : The Sub Area Manager,
Saoner, Project, Western Coalfields Ltd.,
P.O.: Saoner, Distt. Nagpur.

V/S

Party No. 2 : The Vice President,
Bhartiya Koya Khadan Mazdoor Sangh,
Patansaongi Mine of WCL, Patansaongi,
Distt. Nagpur.

AWARD

(Dated: 19th January, 2012)

This is a reference made by the Central Government for adjudication of the industrial dispute between the employers in relation to the management of Saoner Sub-Area W.C.L. and their workman, Shri Hemraj Devraj Janbade

("the workman" in short) through his union to the Central Government Industrial Tribunal, Jabalpur, as per letter No. L-22012/291/96-IR (C.II) dated 11/15.7.1997, with the following schedule:

"Whether the action of the management of Saoner Sub-Area of WCL, Distt. Nagpur, in dismissing Sh. Hemraj Devraj Janbade, Category-I Mazdoor, from services is legal and justified? If not, to what relief is the workman entitled and from which date?".

Subsequently, the reference was transferred to this Tribunal for disposal in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman through his union filed his statement of claim and the management of the WCL (hereinafter referred to as the Party No. 1) filed its written statement.

3. The case of the workman as projected in the statement of claim is that he was employed in 1980 in Patansaongi Coal Mine of WCL and was transferred to Saoner Mine on 14.10.1986 and on 22.7.1991, he was served with a charge sheet by the Party No. 1 on the allegation of commission of theft of 45 feet of armed cable, from underground mine No. 1 and a departmental enquiry was initiated against him and the departmental enquiry was concluded in a haste and the Inquiry officer was biased and the enquiry was held basing on his alleged statement before the Police admitting the commission of the theft and the findings of the Inquiry Officer are not based on the materials on record and without any evidence regarding his involvement in the commission of the alleged theft and in the criminal case initiated against him by the Police for the commission of the alleged theft of the armed cable, the Court on 28.4.1994 discharged him as no *prime facie* evidence was found against him and as such, the departmental enquiry held against him is not proper, legal and by following the principles of natural justice.

4. In its written statement, the Party No. 1 has pleaded *inter-alia* that on 13.7.1991, the workman was working as Body Searcher in Saoner project and his duty was in the third shift in Mine No. 1 of Saoner project and in the said underground mine, there are only two outlets, which are being guarded by the body Searchers round the clock and the management came to know that copper wire measuring 45 feet weighing approximately 24.600 Kgs. and valued at Rs. 2,460/- was stolen from the Mine and accordingly, FIR was lodged by the Senior Executive Engineer (E&M), Mine No. 1 regarding the theft of the cable on 15.7.1991, in Saoner Police Station and during investigation of the case, Police seized the copper wire from one of the accused persons and it was found that the workman and some other workers were involved in commission of the theft of the cable wire and as the underground mines were guarded by the Body

Searchers, it was not possible to remove any material from the mine without the knowledge of the Body Searchers and therefore, the workman was served with the charge sheet for commission of theft, fraud, dishonesty and willful damage to the property of the employer and as the reply submitted by the workman on 10.8.1991 was found not to be satisfactory, the departmental enquiry was initiated and Shri R.K. Sharma, SOM/Manager Mine No. 1 of Saoner project was appointed as the Inquiry Officer and Shri R.Bhardwaj was appointed as the management representative and after his appointment, the Inquiry Officer issued memo of the enquiry, fixing the date of the hearing and the enquiry was conducted on 3.9.1991, 14.9.1991, 24.9.1991, 26.9.1991, 3.10.1991, 4.10.1991 and 8.10.1991 and the enquiry was conducted legally, properly and by following the principles of natural justice and the workman participated in the enquiry and availed the assistance of his co-worker, Shri Babulal and the management witnesses were examined in presence of the workman and his co-worker and they were also cross-examined at length by the workman and his co-worker and the workman was also offered opportunity to produce defence witness, if any and the Inquiry Officer *vide* report dt. 19.10.1991 held the charges leveled against the workman under clause 17(i), (k) and (g) of the standing orders to have been proved and the workman was not acquitted by the Court on merit and he was only discharged from the charges on the ground that charges were not framed against him for a long period and the enquiry report alongwith the entire documents of the departmental enquiry was put up before the Disciplinary Authority for consideration and examining the report, the relevant documents on record and assessing the evidence, the Disciplinary Authority was satisfied with the findings of the Inquiry Officer and agreed with the findings of the Inquiry Officer and accordingly, imposed the punishment of dismissal from service against the workman, as per his order dt. 29.10.1991 and the dismissal of the workman was not based on the criminal case, but he was served with the charge sheet under the provision of the standing orders applicable to the workman and the order of dismissal was passed basing on the proved misconduct in the departmental enquiry and the punishment imposed against the workman is proportionate to the proved misconduct of the workman.

5. In his rejoinder, the workman has pleaded that the inquiry was completed with undue haste and without providing adequate opportunity to defend himself and the Inquiry Officer did not record the evidence as deposited by the witnesses but recorded the same as per his own whims and the findings of the Inquiry Officer are perverse.

6. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the validity of the departmental enquiry was taken up for consideration as a preliminary issue and as per orders dated 01.04.2011, the enquiry was held to be legal, proper, justified and by following the principles of natural justice.

7. It was contended by the learned advocate for the workman, that the findings of the enquiry officer are perverse, as the entire report of the enquiry officer does not disclose as to whether any report received from the police by the management of party no. 1 was placed before him or not, the evidence of the witness examined on behalf of the management is hear say evidence and basing on such hearsay evidence, the findings are based and material witness, Shri Parmeswaran, Sr. Executive Engineer (E&M), who had submitted the F.I.R. regarding the theft of the armed cable was not examined and material documents were not produced in the enquiry and as the findings are based on imagination and not based on materials on record and the enquiry officer did not consider the objections raised by the workman in the departmental proceedings in regard to the mode of recording of the evidence of the witnesses for the management and proceeded with the enquiry and even though management was aware of the pendency of the criminal case against the workman, management proceeded with the departmental enquiry and the workman was discharged in the criminal case by the court, as such, the dismissal of the workman was unwarranted. It was further submitted by the learned advocate for the workman that the submission of the charge-sheet against the workman by the employer on the basis of unproved criminal offence and dismissing the workman from services amounts to illegal act and the name of the workman was not mentioned as a suspect in the two F.I.R. submitted on 15.07.1991 and 16.07.1991 by the Sr. Executive Engineer, (E&V), Saoner and though, there was no evidence at all in the proceedings of the enquiry regarding the workman causing willful damage to the work in progress or to the property of the employer, the findings of the enquiry officer that both the misconducts have been proved are erroneous and baseless and for that the findings are perverse and illegal. It was also contended that the punishment of dismissal from service imposed against the workman is shockingly harsh and disproportionate and the workman had rendered unblemished service since the date of his joining of the service without any warning and censure and his past service records and the other extenuating circumstances were not taken into consideration before imposition of the punishment and the punishment imposed against him is unreasonable, unfair and severe.

8. Per Contra, it was submitted by the learned advocate for the party no. 1 that it is already held by this Tribunal that the enquiry is valid, legal and proper and the workman, while working as general mazdoor category-I, on 22.07.1991 as charge sheet was served on him for his alleged involvement in the theft of armed cable from Saoner Mine no. 1 and an enquiry was held against him and on conclusion of the enquiry, the enquiry officer submitted his report holding the workman to be guilty of the charges and the disciplinary authority passed the order of dismissal from service w.e.f. 29.10.1991 and three witnesses were

examined on behalf of the management in support of the charges during the enquiry and the workman examined himself in the enquiry and in his statement given before the police, the workman admitted his guilt and such statement, the FIRs and the report submitted by the police regarding the arrest of the workman in the criminal case were produced and proved by the witnesses for the management and the findings of the enquiry officer are based on the evidence brought before him during the course of the departmental enquiry and the Disciplinary Authority agreed with the findings of the enquiry officer after going through the materials on record and the charges leveled against the workman are very grave in nature and the workman indulged himself in commission of serious acts involving theft and no employer can keep such a person in service and due to the involvement of the workman in commission of the theft of the property of the company, the company lost confidence and as such, the workman is not entitled for reinstatement in service and back wages and the Tribunal has not been vested with the power to interfere with the punishment imposed against the workman. It was further submitted by the learned advocate for the party no. 1 that the action of the management in dismissing the workman was not based on the criminal case, but based on the charges proved against him and the decision of the criminal case was totally on a different perspective and as such, the order of dismissal of the workman from services cannot be set aside in the light of the order passed by the criminal court. It was also submitted that the Tribunal is not empowered to interfere with the punishment, when the findings are based on some evidence on record.

9. The learned advocate for the workman submitted that in this case, there was no legal evidence before the enquiry officer and so also the disciplinary authority to impose the order of dismissal from service against the workman, hence, the same is illegal and when there is no evidence for inflicting the punishment, the Tribunal can interfere with the findings of the enquiry officer and the disciplinary authority. It was also submitted that as in the criminal case, the workman was discharged by the court, the workman should have been reinstated in service with continuity and full back wages.

On the other hand, the learned advocate for the party no. 1 submitted that the Tribunal cannot act as the appellate authority and re-appreciate the evidence and come to a different conclusion than the one arrived in the departmental proceedings. It was further contended that the nature of the departmental and criminal proceedings are different and in the departmental proceedings, strict rules of evidence cannot be made applicable and only preponderance of probabilities have to be looked into but in a criminal trial, strict rules of evidence are applicable and prosecution has to prove the guilt of the accused beyond all reasonable doubts and as the workman was discharged

without any trial, there was no question of his reinstatement in service.

10. In view of the above rival contentions, the points that fall for considerations are:

- (a) Whether this Tribunal can interfere with the findings of the enquiry officer and the disciplinary authority, if they are sought to be proved on no evidence?
- (b) Whether the punishment imposed against the workman is without there been any evidence on record?

It is well settled that the findings recorded in the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course, the court cannot sit in appeal over those findings and assume the role of the appellate authority, but this doesn't mean that in no circumstance the court can interfere and such interference can be made, if there was no evidence to support the findings or the findings recorded were such as could not have been reached by any ordinary prudent man or the findings were perverse. It is also well settled that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial in character and therefore it is necessary that the Tribunal should arrive at its conclusion on the basis of some evidence, that is to say, such evidence which and that too with degree of definiteness points to the guilt of the delinquent and doesn't leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse. It is also well settled by the Hon'ble Apex Court that domestic Tribunals, like an enquiry officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act, but it has no where been laid down that even substantive rules, which would form part of principles of natural justice, can be ignored by the domestic Tribunals.

In the light of the above positions, now it is necessary to find out as to whether there is any legal evidence to support the conclusions arrived at by the enquiry officer and the disciplinary authority in this case.

Admittedly, the charge sheet was submitted against the workman on the basis of the information received by the party no. 1 from the police regarding his arrest in the case involving theft of armed cable, which was registered on the basis of the FIRs submitted by the Sr. Executive Engineer, (E&M). It is also not disputed that the workman was discharged in the criminal case by the court. On perusal of the reports submitted to the police, it is found that the name of the workman was not mentioned as a suspect in the same. It is also found that there was no direct evidence regarding the involvement of the workman in commission

of the said theft. The witnesses examined on behalf of the party no. 1 in the departmental enquiry have stated about the workman making confession of committing the theft along with some others before the police officer. A copy of the statement of the workman recorded by the police was also produced in the enquiry. It is settled beyond doubt that confession of an accused before the police officer is not admissible and cannot be taken as evidence against him. No other evidence was adduced in the departmental enquiry showing the involvement of the workman in commission of the theft and as such, the findings of the enquiry officer and so also the disciplinary authority of such evidence are perverse and therefore liable to be set aside.

It is well settled by the Hon'ble Apex Court that the Tribunal can interfere with the perverse findings and set them aside. Accordingly, the questions framed are answered in affirmative. Hence, the punishment of dismissal from service imposed against the workman cannot be upheld.

11. Now, the question for consideration is as to what relief the workman is entitled. In view of the findings that the punishment imposed against the workman cannot be upheld, he is entitled for reinstatement in service with continuity from the date of dismissal from service. However, the workman is not entitled for any back wages, as he has neither pleaded nor proved that he was not gainfully employed from the date of his dismissal. Hence, he is not entitled for any back wages.

Therefore it is ordered:

ORDER

The action of the management of Saoner Sub-Area of WCL, Distt. Nagpur, in dismissing Sh. Hemraj Devraj Janbade, Category I Mazdoor, from services is illegal and unjustified. The order of dismissal from service of Shri Hemraj Devraj Janbade is set aside. The workman be reinstated in service with continuity from 29.10.1991.

The workman is not entitled for back wages or any other relief. The party no. 1 is directed to give effect to the award within one month, from the date of publication of the award in the official gazette.

J.P. Chand, Presiding Officer

नई दिल्ली, 8 फरवरी, 2012

कांआ० 897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/100 ऑफ 2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-01-2012 को प्राप्त हुआ था।

[सं० एल-12011/65/1996-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 8th February, 2012

S.O. 897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award Part (*Ref. No. CGIT-2/100 of 2000*) of the Central Government Industrial Tribunal/Labour Court No. 2, *MUMBAI* now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **BANK OF MAHARASHTRA** and their workmen, which was received by the Central Government on 10/01/2012.

[No. L-12011/65/1996-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

K.B.KATAKE

Presiding Officer

REFERENCE NO. CGIT-2/100 of 2000

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) **BANK OF MAHARASHTRA**

The Deputy General Manager
Bank of Maharashtra
'Lokmangal'
1501, Shivaji Nagar
Pune 411 005.

(2) **MAHARASHTRA EXECUTORS AND TRUSTEE CO. LTD.**

Maharashtra Executors & Trustee Co. Ltd.
'Lokmangal'
1501, Shivaji Nagar
Pune 411 005.

AND

THEIR WORKMEN

The General Secretary
Bank of Maharashtra Karmachari Sena
77, Yashoda Niwas
Shivaji Park, Dadar
Mumbai 400 028

APPEARANCES:

FOR THE EMPLOYER No. 1 : Mr. V.Narayanan,
Advocate.

FOR THE EMPLOYER No. 2 : Mr. M.B. Anchan,
Advocate.

FOR THE WORKMEN

: Mr. S.Z. Chowdhary,
Advocate.

Mumbai, dated the 2nd December, 2011.

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No. L-12011/65/1996-IR(B-II) dated 06/10/2000 & Corrigendum dated 15/03/2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:—

"1) Whether the employees of the Maharashtra Executor and Trustee Company Ltd. (MTCO) can be treated as employees of the Bank of Maharashtra?

2) Whether the employees of the METCO are entitled to the benefits of bi-partite Settlements for Banking Sector?

3) Whether the denial to treat them at par with the employees of the Bank of Maharashtra is legal and justified?

4) If so, what relief the workmen are entitled to?

2. After receipt of the reference, both the parties were served with the notices. They appeared through their respective legal representatives. The second party union has filed its statement of claim at Ex-9. According to them, the second party is a trade union whereas the first party is a Banking Company and Nationalized Bank. First party no. 2 is a subsidiary company of first party no. 1. The employees of the two organizations are identical and the handful employees of Trustee company cannot be treated as separate entity at all. The employees are getting DA on par with the employees of Bank of Maharashtra. The entire share capital of the trustee company is held by the Bank of Maharashtra. The Chairman of both the companies was the same till 1995. Some Directors of the Bank of Maharashtra are nominated to the Board of Directors of the Trustee Company. The first party no. 2 was set up for effectively carrying out the object of the Bank. There was Bi-partite agreement between the two Associations. However when the scale of pay of employees of Bank were revised, the employees of Trustee company were not given this scale of pay as per Bi-partite settlement immediately. However in 1986 or there about some benefits of 4th Bi-partite settlement were given with retrospective effect. There was a 5th Bi-partite settlement between 1987 and 1989. The said settlement was further modified on 29/06/1990. The advantage of the 5th Bi-partite Settlement was given to the Bank employees.

3. Till 1987 employees of Trust were receiving the advantage of various settlements in respect of pay scales

with the employees of Bank. However, in 1991, Bank of Maharashtra took certain unilateral decision and issued a draft circular dt. 6/8/1991 and proposed service conditions and proposed service conditions were informed to the employees of the Trust company by which the employees of Trust company were to get much lower scale than those available to the employees of the Bank. Inspite of several protests and representations, the first party refused to give equal benefit of pay scale to the employees of Trustee Company. The employees of Trustee Company are receiving low pay scale, lower increments, leave pay etc. Therefore second party filed a writ petition before Hon'ble High Court no. 592/1992. After hearing both the parties, Hon'ble Court directed to avail remedy before Industrial Tribunal. They approached to ALC(C). ALC called both the parties. As there was no settlement, he sent a report of failure.

4. The second party union prays for declaration that the first party no. 2 be declared as part an parcel of first party no. 1 and both are one and the same and the employees of first party no. 2 are the employees of first party no. 1. They also sought for direction to direct the bank to apply service conditions of the Bank employees to the employees of Trust Company also as per the 5th Bi-partite settlement and also pray for cost of the reference.

5. The first party no. 1 resisted the statement of claim *vide* its written statement Ex-13 whereas first party no. 2 resisted the statement of claim *vide* its written statement ex-15. They have raised the preliminary objection that appropriate Govt. is the State Govt. Therefore, this Tribunal has no jurisdiction. They have challenged all the allegations of the second party. According to them they are separate entities and the employees of first party no. 2 are not entitled to get the benefits of 5th Bi-partite Settlement. They are not employees of first party no. 1. Therefore they pray that the reference be dismissed.

6. My Ld. Predecessor had framed the issues at Ex-21. At the instance of first party, additional issue no. 1(A) was framed as per order below Ex-22 and it was treated as preliminary issue. My Ld. Predecessor heard both the parties. By his order dt. 1/6/2006 he decided this preliminary issue in favour of the second party union. He held that Central Govt. is the appropriate Govt. The said order was challenged before Hon'ble High Court in WP no. 6762/2007. During pendency of the writ, the parties have arrived at a Settlement. Therefore they approached the Hon'ble High Court and submitted the proposal of settlement duly signed by the parties. In the light of compromise on record, Hon'ble Court disposed of the writ petition. The parties have filed the memorandum of settlement on record and pray to pass the award in terms of memorandum of settlement. Thus I pass the award in terms of memorandum of settlement. Thus the order:

ORDER

The reference is allowed as per the memorandum of settlement Ex-74. Memorandum of settlement be treated as part of the award. The management to deposit the amount as agreed in the memorandum of Settlement.

Date: 02.12.2011

K.B. Katake, Presiding Officer

Ex. No. 74

BEFORE THE HON'BLE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2 AT MUMBAI.

REFERENCE NO. 2/100 OF 2000.

BETWEEN

1) Bank of Maharashtra

2) The Maharashtra Executors and Trustee Co. Ltd.

AND

THEIR WORKMEN

through the Bank of Maharashtra Karmachari Sena
MAY IT PLEASE THIS HON'BLE COURT:—

1) The Award - Part I passed by this Hon'ble Tribunal in the above reference was challenged by the First Party No. 2 *vide* Writ Petition No. 6762 of 2007.

2) The parties to the reference have negotiated the subject matter of above reference and have settled the same *vide* Memorandum of Settlement dated 19/11/2011, a copy whereof is hereto annexed and marked as Annexure "A".

3) In view of the said Memorandum of Settlement dated 19/11/2011, the parties hereto have filed consent terms dated 28/11/2011 before the Hon'ble Bombay High Court on 28/11/2011 and the said Hon'ble Court was pleased to dispose of the said Writ Petition No. 6267 of 2007 on 28/11/2011. Copies of the said consent terms dated 28/11/2011 and the order passed by the Hon'ble Bombay High Court in view thereof are hereto annexed and marked as Annexure "B" & "C" respectively.

4. It is, therefore, prayed that the reference may please be disposed of as settled.

1. For Bank of Maharashtra.

Mumbai :

Dated : 1/12/2011

For the Maharashtra Executor
and Trustee Co. Pvt. Ltd.

2. For the Maharashtra Executors and Trustee Co.
Ltd.

Gen. Secretary

Bank of Maharashtra Karmachari Sena

FOR THE WORKMEN.

S.Z. CHAUDHARY

Advocate

For Bank of Maharashtra Karmachari Sena

MEMORANDUM OF SETTLEMENT
WAGE REVISION 2011
BETWEEN
MANAGEMENT OF
THE MAHARASHTRA EXECUTOR & TRUSTEE CO.
PVT. LTD.
AND
BANK OF MAHARASHTRA KARMACHARI SENA
(Representing Workmen Employees of METCO)

MEMORANDUM OF SETTLEMENT
between
Management of
The Maharashtra Executor & Trustee Co. Pvt. Ltd.
and
Bank of Maharashtra Karmachari Sena
(Representing Workmen Employees of METCO)

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MEMORANDUM OF SETTLEMENT
BETWEEN
MANAGEMENT OF
THE MAHARASHTRA EXECUTOR & TRUSTEE CO.
PVT. LTD.
AND
BANK OF MAHARASHTRA KARMACHARI SENA
(Representing Workmen Employees of METCO)

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अनुक्रमांक 6981 दिनांक 18-11-11 रुपये 1000/-
मुद्रांक कोणत्वा कारणासाही पापावयाचा आहे Agreement
मुंबई मुद्राक अधिनियम 1958 चे अनुच्छेद.....
मुद्राक नाव The Maharashtra Executor and Trustee Co. Pvt. Ltd.
संपूर्ण पता 568, Kesariwada, Adjacent to Bank of Maharashtra

Narayan Peth Branch, Pune-411030

मुद्राक धारकाची सही

MEMORANDUM OF SETTLEMENT

MEMORANDUM OF SETTLEMENT UNDER
SECTION 2(p) AND SECTION 18(1) OF THE
INDUSTRIAL DISPUTES ACT, 1947 READ WITH RULE
62 OF THE BOMBAY RULES is executed on 19th day of
November 2011 at Mumbai BETWEEN Management of

THE MAHARASHTRA EXECUTOR & TRUSTEE CO.
PVT. LTD., having its registered office at 568, Narayan Peth,
'Kesariwada' PUNE - 411 030 (hereinafter referred at as the
"COMPANY")

AND
BANK OF MAHARASHTRA KARMACHARI
SENA, 25, Unique House, Brelvi Marg, Fort MUMBAI -
400 023, registered as Trade Union at Mumbai Registration
No. B/Y/2/9750 representing Workmen Employees of The
Maharashtra Executor & Trustee Co. Pvt. Ltd. (herein after
referred to as "UNION")

NAMES OF THE PARTIES

Representing Management of
The Maharashtra Executor &
Trustee Company Private
Limited

Representing Workmen
Employees of The
Maharashtra Executor
& Trustee Company
Private Limited
-Bank of Maharashtra
Karmachari Sena

- | | |
|---|---|
| 1) Mr. V.Y. Chhapekar
Director, METCO | 1) Mr. Sudhir Joshi
President. |
| 2) Mrs. Madhuri Kulkarni
Chief Executive Officer
METCO. | 2) Mr. Ashok Kule.
Working President |
| | 3) Mr. Nitin Rege
General Secretary |
| | 4) Mr. Ashok Jadhav
Vice President |
| | 5) Mr. Krishnakumar
Paul
Organizing Secretary |
| | 6) Mr. Anil Bhatvadekar
Organizing Secretary |

SHORT RECITAL

WHEREAS The Maharashtra Executor & Trustee Co. Pvt. Ltd. is fully owned Subsidiary of Bank of Maharashtra incorporated under the Companies' Act 1913 in the year 1946

AND WHEREAS *majority* of the workmen employees of the Company are the members of Bank of Maharashtra Karmachari Sena a Trade Union registered under Trade Unions Act.

AND WHEREAS the Union submitted its charter of demands on 12-08-2008 asking for the revision in the salary and the service conditions of the workmen.

AND WHEREAS the Company and the Union thereafter had long discussions and negotiations on the demands of workmen.

AND WHEREAS the Company and the Union and the workmen have realized the global changes in the business environment and the essence of improvement in service to the customer as the company is engaged in service sector. AND WHEREAS the improvement in performance, flexibility while performing any task and achieving highest productivity has been accepted by the Union and the workmen as essence of this settlement.

AND WHEREAS the Company and the Union after negotiation and several round of talks have arrived at

consensus on various issues in respect of the demands and accordingly signed and executed a MOU on 14/11/2011 (Annexure 1) and mutually agreed for a package for the workmen employees to the extent of Rs. 9.75 lakhs towards enhanced salary inclusive of additional load in P.F. Contribution by employer, notional arrears and enhanced limits of other benefits

AND WHEREAS in pursuance of above MOU both the parties have arrived at consensus on various issues forming part of this settlement and decided to reduce it in writing for smooth implementation thereof.

TERMS OF SETTLEMENT

NOW IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS UNDER:—

1) APPLICABILITY:

This settlement will be applicable to the workmen employees of the company who are on the roll of the company as on 01/10/2007

2) SCALES OF PAY

For Clerical Cadre

4410(215x3)-5055(335x3)-6060(470x4)-7940(500x3)-9440(560x4)-11680-(970x1)-12650(560x1)-13210(20 years)

For Subordinate Staff

4060-(105x2)-4270(115x2)-4500(135x2)-4770(165x3)-5265(195x4)-6045(235x3)-6750(270x3)-7560(20 years)

Note:

- (a) Fitment in new scales of pay shall be on a stage to stage basis.
- (b) There shall be no change in the dates of annual increments because of the fitment.

Stagnation Increment:

FIVE (5) Stagnation increments (on reaching the maximum) of Rs. 560/- for Clerks with interval of 3 years and Rs. 270/- for Sub-Staff with interval of two years.

3) DEARNESS ALLOWANCE

Clerical Staff:

D.A. shall be calculated @0.15% of Basic Pay + Computer Allowance of each slab of 4 points beyond 2288 points

Sub-Staff:

D.A. shall be calculated @0.15% of Basic Pay + Computer Allowance + Special Allowance of each slab of 4 points beyond 2288 points.

D.A. in the above manner shall be paid for every rise and fall of 4 points over 2288 points in the quarterly average of the All India Average Working Class Consumer Price Index (general). Base 1960=100

The working of D.A. will be as under.

(CPI-2288)/4*0.15.

There will be no ceiling on D.A.

4) HOUSE RENT ALLOWANCE

HRA shall be paid as under:

CLERKS: 7% on Basic Pay+Computer Allowance

Sub-Staff: 7% on Basic Pay+Computer Allowance+Special Allowance in full, wherever applicable, with no ceiling limits for both Clerk & Sub-Staff.

5) CITY COMPENSATORY ALLOWANCE

The C.C.A. shall be paid as under:—

1) Clerks—@ 4% of Basic pay with a maximum of Rs. 450/- p.m.

2) Sub-Staff—@ 4% of basic pay with a maximum of Rs. 300/- p.m.

6) OTHER ALLOWANCES

a) SPECIAL ALLOWANCE

Uniform Special Allowance of Rs. 505/- which shall rank for D.A. and H.R.A. shall be paid to all Sub-Staff who shall perform such duties as per the orders of Management.

b) COMPUTER ALLOWANCE:

1. Clerks: Rs. 910 per month.

2. Sub-staff: Rs. 500/- per month.

Which shall rank for D.A.

c) MEDICAL REIMBURSEMENT

Medical Reimbursement shall be available to the workman and members of their family consisting of the Workman's spouse (husband or wife) and dependent children and wholly dependent parents on declaration basis:—

Clerks: Rs. 3,000 per year

Sub-Staff: Rs. 2,500/- per year

d) WASHING ALLOWANCE

Rs. 150/- per month to Sub-Staff. This will not be counted for D.A. and H.R.A.

PROVIDENT FUND

Provident Fund shall be deducted @ 10% of the *Basic Pay only* and no other Allowances etc. shall qualify for the said P.F. deductions; and equal contribution shall be made from the Company for both Clerks & Sub-Staff to the Provident Fund.

8) GRATUITY

Gratuity applicable as per the prevalent Gratuity Act and as per the provisions of Trust Deed of Gratuity fund Trust of the Company.

9) BONUS

As per provisions of Payment of Bonus Act, as applicable.

10) FESTIVAL ADVANCE

Clerk: Rs. 10,000/-

Sub-Staff: Rs. 8,000/-

Festival advance can be availed once in calendar year and will be repaid in 10 equal monthly installments from the salary of the employee.

11) OTHER FACILITIES**a) Halting Allowance**

Clerks: Rs. 300/-

Sub-Staff: Rs. 200/-

RULES FOR HALTING ALLOWANCE

- i. For the purpose of Halting Allowance, a day shall mean each period of 24 hours or part thereof reckoned from the time the employee leaves headquarters, provided the duration of absence from headquarters cover at least one night.
- ii. Halting allowance is payable in addition to the Class of Fare to and fro, to which the employee is entitled for travel as on tour.
- iii. Where an Employee is required to travel within Municipal Limits, Municipal Corporation including Cantonment or Panchayat limits or where an employee is required to travel outside such limits but within 5 Kms. from the Office where he is working, no halting allowance will be payable.

b) Salary Advance

Advance against salary can be availed for maximum three times in a year @ 75% of Net (take home) salary.

c) Leave Fare Concession

L.F.C. of Rs. 5,500/- once in four years with Privilege Leave encashment facility for maximum 30 days for both Clerks & Sub-Staff.

RULES FOR LEAVE FARE CONCESSION

- i. Full time permanent Employees will be given L.F.C. provided they have completed 11 month's active service.
- ii. The amount of L.F.C. will be the actual return Railway or Bus Fare incurred by the Employee and

members of his/her family or the outer limit of Rs. 5500/- whichever is lower.

- iii. An Employee will be permitted to avail leave fare concession once in every four years.
- iv. For the purpose of availment of L.F.C., the employee shall produce satisfactory evidence of the actual expenditure incurred either by way of travel tickets or money receipts giving full details. It is clarified that an employee claiming reimbursement under L.F.C. shall produce money receipt as evidence and if the money receipt is not available, any other satisfactory evidence of travel along with a suitable explanation for the non production of money receipt/s.
- v. For the purpose of L.F.C. the expression "Family" shall mean the employee's Spouse, Wholly dependent children and wholly dependent parents.
- vi. The Commencement of four year period for the purposes of L.F.C. will be in continuation of the previous block of individual employee.
- vii. The employee can surrender his/her LFC block and encash the eligible amount. However the amount so encashed shall be liable for Income-Tax as per the extant Income-Tax rules.

The employee should avail minimum of 2 days leave for the said purpose.

d) Medi-claim Facility

The workmen employees shall be covered under Medi-claim Scheme under Maha-Bank Swasthya Yojana as per the provisions of the said scheme up to the insurance cover of Rs. 1,00,000/- per year.

The premium thereof shall be borne by the Company.

12. SERVICERULES:

Model Standing Orders for Workmen as per the Industrial Employment (Standing Order) Act, 1946, as per Sch. I (B) of Bombay Industrial Employment (S.O.) Rules 1959 shall continue to apply to the Workmen Employees.

13) The extant provisions under Leave rules, Computerization Policy & Promotion Policy shall continue to be applicable till amended.

14) DATE OF EFFECT & IMPLEMENTATION**A. Period of Settlement:**

This settlement shall be binding on the parties and will come in force from 1.10.2007 and will remain in force till 31.03.2013 subject to the dates of implementation for various provisions.

B. Implementation:

Various provisions of this Settlement shall take effect from the dates specified herein below.

- (i) The Scales of Pay, Stagnation Increment, Dearness Allowance, City Compensatory Allowance, House Rent Allowance, fixed Computer Allowance, Provident Fund, Medical Aid and other allowance shall be effective from 01.04.2011.
- (ii) All other facilities such as Halting Allowance, Leave Fare Concession shall be effective from the date of this settlement.

C. Arrears:

The notional arrears arising out of this settlement will be paid from 1.10.2007 till 31.3.2011 and provident Fund deductions will not be applicable on it.

- i. The amount of Notional Arrears to be distributed amongst the workmen shall not be more than Rs. 2,00,000/- . The apportionment of the same shall be as under:

Clerks: Rs. 275/- p.m.

Sub-Staff: Rs. 235/- p.m.

- ii. The arrears for the period from 01.04.2011 to 31.10.11 will be paid at flat rate i.e.

[(The salary payable at new scale for the month of APRIL 2011) Less (The Salary already paid for APRIL 2011)] multiplied by 7.

The salary for the month of and from November 2011 will be calculated and paid as per this settlement.

D. The Bank of Maharashtra Karmachari Sena on behalf of the workmen employees agrees that during the operation of this Settlement, the employees will not raise any demand of any nature whatsoever in respect of the matters covered by this Memorandum of Settlement.

E. The Bank of Maharashtra Karmachari Sena whole heartedly assures co-operation for revitalization & strengthening of business & improved profitability and shall stand committed for improving the efficiency of the Company and improved contribution of employees in development of business and housekeeping **which is an essence of this agreement as stated here inabove.**

15. INTERPRETATION:

If there is any difference of opinion regarding interpretation of any of the provisions of this Settlement, the matter shall be taken up with the Management by the Union for discussions and amicable settlement.

16. The financial benefits emanating from the aforesaid package shall be given effect only after execution of the agreement and compliance of the terms and

conditions as laid down in the MOU dated 14/11/2011 as per Annexure 1 executed by both the parties.

FOR MANAGEMENT OF

THE MAHARASHTRA EXECUTOR & TRUSTEE CO. PVT. LTD.

1. Mr. V.Y. Chhapekar
Director, METCO

for the Maharashtra Executor
& Trustee Co. Pvt. Ltd.

2. Mrs. Madhuri Kulkarni
Chief Executive Officer, METCO

Chief Executive Officer

WITNESSESS

(1) Signature: (2) Signature:

Name:..... Name:.....

Address:..... Address:.....

For BANK OF MAHARASHTRA KARMACHARI SENA

(1) Mr. Sudhir Joshi President-BOMKS	(2) Mr. Ashok Kule Working President-BOMKS
(3) Mr. Nitin Rege General Secretary-BOMKS	(4) Mr. Ashok Jadhav Vice-President BOMKS
(5) Mr. Krishnakumar Paul Organizing Secretary-BOMKS	(6) Mr. Anil Bhatwadekar Organizing Secretary-BOMKS

WITNESSESS

1) Signature: 2) Signature:

Name:..... Name:.....

Address:..... Address:.....

MEMORANDUM OF UNDERSTANDING

BETWEEN
MANAGEMENT OF
THE MAHARASHTRA EXECUTOR &
TRUSTEE CO. PVT. LTD.

AND

BANK OF MAHARASHTRA KARMACHARI SENA
(Representing Employees of METCO)

MAHARASHTRA

अनुक्रमांक 8451 दिनांक 14-11-11 रुपये 100/-

मुद्रांक कोणित्या कारणासाठी वापरावयाचा बैंक करार

मुम्बई मुद्रांक अधिनियम 1957 चे अनुच्छेद.....

उद्रांक कर संपूर्ण नाव चीफ एक्सिक्युटिव ऑफिसर दि महाराष्ट्र

संपूर्ण पता नारायण पेठ पुणे, एक्सिक्युटर अंड्ट्रस्टी कॉ प्रा० लि०

वास्ते ब्यायर नांव
वालिमक एस० आर०
पता पुणे
द्रांक धाराकाची/हस्ते व्यवतीची सही

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is executed **on** this **14th day of November 2011** at Pune BETWEEN Management of THE MAHARASHTRA.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is executed **on** this **14th day of November 2011** at Pune BETWEEN Management of THE MAHARASHTRA.

WHEREAS The Maharashtra Executor & Trustee Co. Pvt. Ltd. is a fully owned Subsidiary of Bank of Maharashtra incorporated under the Companies Act. 1913 and having its Registered Office at 568, Narayan Peth, Kesariwada' PUNE-411030.

AND WHEREAS majority of the employees of the Company are the members of Bank of Maharashtra Karmachari Sena a Trade Union registered under Trade Unions Act;

AND WHEREAS the union submitted its charter of demands on 12-08-2008 asking for the revision in the salary and the service conditions of the workmen

AND WHEREAS the company and the union thereafter had the long discussions and negotiations on the demand of the workmen

AND WHEREAS the union and the workmen had earlier raised the dispute claiming the services conditions on the par of the employees of the Bank of Maharashtra

AND WHEREAS after series of discussions the union and the workmen have given up their demand and have agreed to withdraw the Reference (CGIT) No. 2/100 of 2000 pending in the Central Industrial Tribunal Mumbai and withdraw all their allegations, disputes, grievances, claims, demands and legal proceedings against the Company.

AND WHEREAS the company and the union and the workmen have realized the global changes in the business environment and thus have realized the essence of improvement in service to the customer as the company is engaged in service sector

AND WHEREAS the improvement in performance and achieving highest productivity has been accepted by the union and the workmen as essence of this understanding.

EXECUTOR AND TRUSTEES CO. PVT. LTD., having its registered office at 568, Narayan Peth, 'Kesariwada' PUNE-411 030 (hereinafter referred to as the "COMPANY")

AND

BANK OF MAHARASHTRA KARMACHARI SENA, a registered Trade Union having Registration No. B/Y/2/9750 and having Registered Office at 25, Unique House, First Floor, Brelvi Street, Fort, Mumbai 400 023 (herein after referred to as the "UNION")

NAME OF THE PARTIES

Representing Management of The Maharashtra Executor & Trustee Company Private Limited	Representing Employees of The Maharashtra Executor & Trustee Company Private Limited -Bank of Maharashtra Karmachari Sena
---	---

- | | |
|---|--|
| (1) Mr. V. Y. Chhapekar
Director | 1) Mr., Ashok Kule
-Working President. |
| (2) Mrs. Maedhri Kulkarni
Chief Executive Officer
METCO | 2) Mr. Nitin Rege,
General Secretary,
3) Mr. Ashok Jadhav,
Vice President |
| | 4) Mr. Anil
Bhatawadekar
Organizing Secretary. |
| | 5) Mr. Paul
Krishnakumar
Organising Secretary |

AND WHEREAS in pursuance of above understanding Union submitted their Charter of Demands on behalf of Employees for consideration of Management of Company and after several rounds of talks both the parties have arrived at consensus on various issues forming part of this settlement and decided to reduce it in writing for smooth implementation thereof;

AND WHEREAS both the parties affirm their faith in democratic principles and bind themselves to settle all future differences, disputes and grievances by mutual negotiations, a conciliations and voluntary arbitration and promote constructive co-operation and abide by the spirit of this agreement.

AND WHEREAS it has been agreed by the Union that every employees shall exhibit flexibility while performing any task entrusted to them.

AND WHEREAS the detailed modalities are being worked out and finalised, both the Company and the UNION have in the mean time reached an understanding to settle their disputes and issues whereunder the Company and the Union have after elaborate discussions mutually agreed to a package for the workmen employees to the extent of Rs. 9.75 lacs towards enhanced salary, notional arrears and enhanced limits of other benefits.

AND WHEREAS after the modalities are worked out the parties would be executing the required Agreement containing specific and elaborate provisions procedure etc.

NOW IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERE TO AS UNDER:—

1. Applicability: This settlement will be applicable to the employees/workmen of the company who are on the role of the company as on 01-10-2007.

2. The Union has unconditionally agreed and accepted the offer of the Company whereunder a total amount of Rs. 9.75 lacs would be payable to the workmen employees in the manner and in the form as may be decided between the Company and Union in full satisfaction of their demands.

3. The distribution of the amount of Rs. 9.75 lacs will be as under:

a.	Quantum of enhanced salary from 01-04-2011 to 31-03-2012 including additional burden on P.F. Contribution by Company	Rs. 6.71 lacs
b.	Notional arrears from 01-10-2007 to 31-03-2011	Rs. 2.00 lacs
c.	Arrears for enhanced limit of LFC, medical reimbursement etc.	Rs. 0.76 lacs
d.	Enhancement in Mediclaim facility (payment of premium by the Company)	Rs. 0.28 lacs
	TOTAL	Rs. 9.75 lacs

4. All the litigations/court cases shall be withdrawn by both the parties and there shall be no claims or counter claims on execution of this MOU. Upon execution of the Agreement the court cases will be withdrawn by filing consent terms.

5. The financial benefits emanating from the aforesaid package shall be given effect only after execution of the Agreement and withdrawal of the litigation/court cases by both the parties.

6. The proposed Agreement will be binding on the parties and valid upto 31-03-2013. During the operation of this Agreement the workmen will not for any reason whatsoever raise any demand of any nature whatsoever on the Company in respect of matters related and to be incorporated in the proposed agreement.

In witness whereof the parties have signed this MOU on the date mentioned hereinabove

SIGNED AND DELIVERED on behalf of

MANAGEMENT OF

THE MAHARASHTRA EXECUTOR & TRUSTEE CO. PVT. LTD.

BY

1. Mr. V. Y. Chhapekar
The Director of METCO

2. Mrs. Madhuri Kulkarni
Chief Executive Officer, METCO

WITNESSES

(1) Signature..... (2) Signature.....

Name: Shri Y. P. Bhateja Name: V.B. Ghate

Address: Bank of Maharashtra.

Address: Bank of Maharashtra

Lokmangal, 1501,
S"Nagar, Pune

Lokmangal, 1501 S'Nagar,
Pune

SIGNED AND DELIVERED ON BEHALF OF
BANK OF MAHARASHTRA KARMACHARI SENA

BY

1. Mr. Ashok Kule
Working President.

2. Mr. Nitin Rege,
General Secretary,

3. Mr. Ashok Jadhav,
Vice President

4. Mr. Anil Bhatawadekar
Organizing Secretary.

5. Mr. Paul Krishnakumar
Organizing Secretary

WITNESSES

(1) Signature..... (2) Signature.....

Name: Sunil G. Damle Name: Rajendra H. Sonavane

Address:..... Address:.....

ANNEXURE "B"

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6762 OF 2007

The Maharashtra Executors & Trustee Co. Pvt. Ltd.
.....Petitioner

Vs.

Bank of Maharashtra Karmachari Sena & Ors.
...Respondents

CORM: Hon'ble Mr. Justice A. V. Nirgude
DATE: 28th November 2011

CONSENT TERMS

1. The parties here in have amicably settled the dispute on the following terms:

- (a) The Respondent No. 1 agrees & undertake that the demands raised by them and which are referred for adjudication to the Central Government Industrial Tribunal in Reference (CGIT) No. 2/100 of 2000 shall stand withdrawn.
- (b) In view of the demands being withdrawn the parties herein agree that no Industrial Dispute is in existence between the parties and the Reference (CGIT) No. 2/100 of 2000 shall stand disposed of in terms of these consent terms.
- (c) By consent of the parties the impugned Judgement & Award dated 01st June 2006 passed by the Presiding Officer Central Government Industries Tribunal in Reference (CGIT) No. 2/100 of 2000 shall stand set aside.

HIGH COURT, BOMBAY
IN THE HIGH GOURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6762 OF 2007

The Maharashtra Executors and Trustee

Company Pvt. Ltd.Petitioner

Versus

Bank of Maharashtra Karmachari Sena
& OthersRespondent

Mr. K.S. Bapat i/b. M/s. Desai & Desai for the petitioner

Mr. S.Z. Choudhary for the Respondent No. 1

Mr. Sachin Joshi for the Respondent No. 2

CORAM: -A.V. NIRGUDE J.,
DATED:- 28th NOVEMBER, 2011.

P.C.

1. Not on board. On production, taken on board.

2. The petitioner and the respondent no. 1 who is the contesting respondents have arrived at settlement. Terms of Compromise are submitted on record. They are duly signed by the parties and their respective advocates. Terms of compromise are taken on record and marked Exhibit A-1.

3. Write Petition stands disposed of in terms of Exhibit A-1.

(A. V. NIRGUDE, J.)

"Disclaimer Clause: Authenticated copy is not a Certified Copy"

नई दिल्ली, 8 फरवरी, 2012

का०आ० 898.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया-----के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारी के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न. 2, धनबाद के पंचाट (संदर्भ संख्या 25/2002 एवं 39/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 16-01-2012 को प्राप्त हुआ था

[सं. एल-12011/243/200/आई आर (बी. II),
संएफ-12011/240/2001-आईआर (बी. II)] शीश राम, अनुभाग अधिकारी

New Delhi the 8th February, 2012

S.O. 898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (*Ref. No. 35/2002 & 39/2002*) of the Central Government Industrial Tribunal/Labour Court No. 2, DHANBAD now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of BANK OF INDIA and their workman, which was received by the Central Government on 16/1/2012.

[No. L-12011/243/2001-IR(B-II), No. L-12011/240/2001-IR(B-II)] Sheesh Ram, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 35 OF 2002

PARTIES: Employers in relation to the management of Bank of India and their workman.
(Ministry's order No. L-12011/243/2001 IR(B-II) dt. 22.4.2002)

WITH

REFERENCE NO. 39 OF 2002

PARTIES: Employers in relation to the management of Bank of India and their workman
(Ministry's order No. L-12011/240/2001 IR(B-II) dt. 28.4.2002)

APPEARANCES IN BOTH THE ABOVE CASES

On behalf of the workman : Mr. B. Prasad,
Authorised Representative.

On behalf of the employers: Mr. Jitender Kumar, Officer (IR)

State: Jharkhand

Industry: Banking

Dated, Dhanbad, the 29th
Dec., 2011.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on the under Section 10(1)(d) of the I.D. Act., 1947 has referred the following disputes *vide* their orders referred to above.

SCHEDULE IN REFERENCE NO. 35 OF 2002

"Whether the action of the management of Bank of India in punishing S/Shri Babu Ram, Head Peon, Vijay Kumar Sharma, Driver and Ram Janam Rai, Armed Guard with warning and giving order to recover Rs. 10,000/- each is legal and or justified? If not, what relief they are entitled to?"

SCHEDULE IN REFERENCE NO. 39 OF 2002

"Whether the domestic enquiry conducted by the management of Bank of India against Shri Rameshwar Prasad, Clerk/Cashier was held as per procedure and inconsenance with the principles of natural justice and the punishment awarded thereafter justice and the punishment awarded thereafter was in proportion to the charges framed? If not, what relief the workman Shri Rameshwar Prasad is entitled?"

2. The case of workmen S/Shri Babu Ram and 2 others as sponsored by the union concerned in the present Ref. Case No. 35/02 is that while working in Patna Maiden Branch of the Bank of India, workmen Head Peon Babu Ram Driver Vjay Kumar Sharma and Armed Guard Ram Janam Rai on deputation with other workmen Rameshwar Prasad for transmission of cash Rs. 40 lacs went to Buxer Branch from Patna Main Branch of the Bank of India by the Jeep concerned, too old one to pey on 100 K.M. at a stretch on the road though with its stoppage for sometime after plying it for 60-70 Kms so as not to seize its engine. The vehicle reached Buxer and the Cash Boxes were taken to the Strong Room of Buxer Branch of the Bank where it was counted. Three Officials namely aforesaid Sri Rameshwar Prasad, Clerk-Cashier (Patna Main Branch) Sri D.K. Ojha, Head Cashier and Sri D.R. Mali, Asstt. Manager, both letter of the Buxer Branch were there in course of the counting. The receipt for Rs. 40 lacs only was issued to aforesaid Rameshwar Prasad, but just thereafter, there was a power (Electricity) failure resulting in darkness in the strong room. Then at the call of Sri D.K. Ojha to Peon Janardan Pd for supply of electricity through Generator, the latter went near the gate of the strong room, and aforesaid Sri Ojha by taking advantage of the darkness handed over a bundle of currency notes to aforesaid Janardan Pd., who went, and power was restored. Then Sri Ojha suggested for recounting of the cash. At its recounting, a shortage of Rs. 50,000/- (fifty thousand rupees) only was found in it. Sri Rameshwar Pd. was puzzled to hear it, and was asked for returning the counterfoil of cash receipt and cutting was effected as Rs. 39 lacs 50 thousand over the word 40 lacs. At the incidence, the entire cash remittance party was

taken aback. An FIR was lodged by the Management with the Buxar Police station and accordingly the workmen were put to trial by the learned C.J.M. Buxar.

3. Further case of the Union is that on a complaint of one workman Rameshwar Prasad before the learned C.J.M., Buxar, as per whose direction to the local State Bank of India, its Senior Officer after an enquiry submitted a detail report to the Learned C.J.M. who took cognizance against Sri D.R. Mali, the Asstt. Manageer, Sri D.K. Ojha, Head Cashier, and Shri Janardan Prasad, Peon, all of Buxar Branch, who were put to trial. A revision filed by aforesaid Sri Ojha for quashing the cognizance order of the learned C.J.M. was dismissed the learned District Judge, Buxar.

Meanwhile at the domestic enquiry into the charges against the workmen who were chargesheeted for the incidence, though the Enquiry Officer submitted his finding to the Disciplinary Authority about the charge unproved, yet the Disciplinary Authority suo motto substituted the E.O.'s finding with his own, and at this second show cause notice to them for the proposed punishment of 'warning', they pleaded their innocence, but the Disciplinary Authority punished them biasedly with 'warning' permanently, deciding recovery of Rs. 10,000/- per capita from them beyond his power. When their appeal against the order of the Authority was dismissed, they through their Union raised the Industrial Dispute. The Management unconsidered their plea of holding no domestic enquiry on the idential charge in face of their criminal trial for it. Thus the punitive order of the Disciplinary Authority being illegal and against the principle of natural justice was perverse entirely. As such, the reliefs sought for are setting aside the order for refund of their own per capita amount with Rs. 12% compount interest etc.

4. Whereas irrespective of the aforesaid repetition of aforesaid facts about the status of the workmen and the domestic enquiry against them, the case of the Management with specific denials is that these three workmen with two other staff Clerk Cashier Rameshwar Pd. and Armed Guard Medni Singh on 22.4.1998 on deputation had to safety deliver the cash of Rs. 40 lacs Buxar Branch by the Cash Van No. BR ID-1658. The cash was in three Boxes under the locks and keys which were with Rameshwar Prasad, who had received it for remittance. But for their negligent acts of halting the cash van at two places with short intervals on the way from Patna to Buxar by leaving it unguarded exposed to risk, and the delivery of the cash amount shortage of 50 thousand in prejudice to the interest and services less of the Bank amounting to their gross misconduct of 1st Bipartite Settlement dt. 19.10.1966, Head Peon Babu Ram, Driver Vijay Kr. Sharma and Armed Guard Ram Janam Rai were issued their respective charge sheets under Nos. ZO/IL/17/302-303 and 305 with relevant Memos No. RO/ID/17/317, 314, 312, 313 and 311 all dt. 18.1.2000 respectively. After fairly and properly holding the domestic enquiry, the Enquiry Officer submitted his report that the charges in his opinion were not proved against any of the

workmen. But the Disciplinary Authority - Dy. Chief Regional Manager of the Bank on consideration of the record in exercise of his competent power substituted the finding of the Enquiry Officer with his own, holding the workmen guilty, and after giving them show cause punishment Notice and hearing them, awarded all the three workmen "Warning in terms of Clause 21(IV)(C) of the Bipartite Settlement." It was also upheld by the Appellate Authority.

It is alleged that the Chief Manager of the Bank as per the letters all dt. 31.1.2001 directed the workmen concerned cash to deposit Rs. 10,000/- (recoverable from their salaries) proportionate to the loss caused to the Bank on consideration of their respective representations in response to the letters dt. 13.1.2001 and show cause issued by aforesaid Chief Manager for it. Thus the action of the management is alleged to be legal and justified.

The Management in its rejoinder has pleaded that the stoppage of the vehicle carrying the Bank's cash at very short interval on two occasions on the way to Buxar was not permissible for the security reasons. At checking and rechecking/counting of the transmitted cash amount by Sri D.K. Ojha, Head Cashier and Sri D.K. Mali, Asstt. Manager in presence of Sri Rameshwar Pd., it was found shortage of Rs. 50,000/- so a receipt for the received Rs. 39,50,000/- was accordingly issued, but cutting has nothing with it.

5. The case of the workman as sponsored by the Union concerned in the Ref. No. 39/02 is that workman Rameshwar Prasad was initially appointed as a Peon, promoted to clerical cadre, and posted at Patna Main Branch of Bank of India at Frazer Road Patna. While working as Clerk/Cashier, he was entrusted with the duty of cash remittance of Rs. 40 lacs for Buxar Branch, so he along with driver C.K. Sharma, Armed Guard Ram Janam Rai and Medani Singh and sub-staff Babu Ram departed by an old vehicle for Buxar Branch on 22.4.1998. The entire cash of said amount was kept in three steel Boxes under lock and keys with the workman. The vehicle being too old to pay on at one stretch over the distance of about 130 kms from Patna to Buxar was stopped at two safe places for cooling its engine as well as for the safety of all and the cash. The cash van safely reached Buxar. After counting of the cash by Sri D.K. Ojha, Head Cashier, in presence of Sri D.R. Mali, Asstt. Manager of the same Branch, and him (the workman), the same were kept in the cash vault and aforesaid Asstt. Manager issued him a receipt for Rs. 40 lacs. But prior to locking the vault, there was power failure, and meanwhile, Sri D.K. Ojha called Sri Janardan Pd., the Peon of Buxar Branch for generation of electricity through the Private Generator. At the time of opening the door of the strong room, aforesaid Mr. Ojha handed over Sri Janardan Pd. a bundle of currency in the thick darkness. After restoration of power by aforesaid Janardan Pd., Mr. D.K. Ojha told to recount the entire cash. At recounting

of the cash in the strong room in which the Asstt. Manager D.R. Mali was present and it was found shortage of Rs. 50,000/- only. Thereupon, Mr. Mali asked for the receipt from the workman and altered the amount of Rs. 40 lacs into 39.5 lacs.

6. Thereafter, on his return to Patna, he narrated the incidence to the authorities of the Bank, but when they took no action against the official of Buxar Branch, on his complaint of it before the learned C.J.M. Buxar, who after calling for a detailed report from the senior most Officer of the Bank took cognizance and at regular F.I.R. having been registered against Sri D.K. Ojha, Sri. D.K. Mali and Sri Janardan Prasad, they were put to trial. The workman also got anticipatory bail from the Hon'ble High Court, Patna, in the F.I.R. lodged by the Management against him.

Though the management suspended the workman, yet in his application revoked it and posted him at Fatwah Branch of the Bank, Meanwhile, at the initiation of the Domestic Enquiry into the charge as per the chargesheet assured to him by the Management, the Enquiry Officer merely on conjecture held him guilty and submitted a perverse enquiry report. Likewise, having agreed with the Disciplinary Authority as his per Order No. RO/IL/17/353, dt. 28.1.2008 biasedly punished him with lowering him to two stages down in the pay scale and warning under clauses (iv)(c) and 2(iv)(F) of the Bipartite Settlement without the consideration of his innocence and requests as represented by his letter dt. 9.11.2000. Beside that, the Management arbitrarily also decided for recovery of Rs. 10,000/- from his salary to make the loss of Rs. 50,000/- related to the criminal case pending before the Learned C.J.M. concerned. He could not get justice from the Appellate Authority. He is a member of the Scheduled Caste Union Community raised the Industrial Dispute through the Union concerned to refer for adjudication. The action of the management was not legally justified, rather it was arbitrary and discriminatory.

7. Whereas without repetition of the facts of the Management concerning workman Rameshwar Pd. Clerk-cum-Cashier, the case of the Management is that since other four workmen accompanying the workman in remittance of the cash, he was chargesheeted as per the chargesheet with a Memo letter under Ref. No. RO/IR/17/301 and 320 both dt. 18.1.2000 respectively for the charge under clause 19.8 (j) of the first Bipartite Settlement dt. 19.10.1966. At fairly holding of the domestic Enquiry by the Enquiry Officer concerned according to the principle of natural justice, and therein workman through Sri Ramesh Kumar Sinha represented, the Enquiry Officer on reasoned finding held him guilty of it, and submitted the report to the Disciplinary Authority i.e. Dy. Chief Regional Manager, After due show cause punishment Notice with the copies of the E.O.'s and his an substituted finding, the Disciplinary Authority heard the personal hearing of the workman with defence representative over it on 24.11.2000, and

considering his written and oral submission, passed the reasoned punishment order dt. 28.11.2000 against him under the said clause, but without prejudice to Bank's right to recover the less caused and without payment of any pay and allowance (except subsistence one) and other benefits, since his suspension period confirmed. Even the Appellate Authority on the consideration of all the materials on the record upheld the order of the Disciplinary Authority as just and proper. The Management directed to put the workman down to two stage lower in the pay scale, to recover Rs. 10,000/- proportionate to the said shortage amount, as well as to treat his suspension period as noted above. A disciplinary proceeding was also initiated against other four employees accompanying the workman in remittance of the cash, and their separate reference case No. 35/2002 under adjudication. As such the action of the Management in view of the gravity of the charge was most reasonable, legal and justified in awarding the workman the punishment in proportionate to the charge and sympathetically.

8. The management in rejoinder specifically denying the allegation noted above has pleaded that the vehicle concerned was in good condition, but the workman as Cashier was responsible for delivery of the amount. The vehicle old or new is unconcerned with it. The counting and rechecking of the cash in presence of the workmen confirmed the aforesaid shortage amount. The law will take its own course of action for criminal liability. Thus the workman is not entitled to any relief.

FINDING WITH REASONINGS

9. Since the both the reference cases have arisen out of the same cause of action between the same management and the workman concerned, so the Ref. Case 35/2002 Camalogously taken with Ref. Case No. 39/2002 for disposal.

On perusal of the case records of both the Reference Cases Nos. 35 and 39 of the year 2002, I find that in course of the evidence of the Management at preliminary point in both the cases, on consensus of both the parties representatives at the fairness of the domestic enquiry against the workmen concerned, this Tribunal as per orders dt. 19.4.2006 in both the cases at the Camp Court, Patna, held the domestic enquiries against the workman S/Shri Babu Ram and two others and workman Rameshwar Pd. in their respective cases as fair, proper and in accordance with the principle of natural justice, and accordingly the relevant papers of the enquiries on waiving formal proof were marked as Ext. M-1 M-2, 3, Extt. M-1 to M-9 and the workman's identical documents as Ext. W-1 and W-2, and respectively. Thus both the cases came up directly for hearing the arguments.

10. The Schedule to the Ref. No. 35/2002 directly relates to an issue about punishment of S/Shri Babu Ram and two others (all category staff) whereas the Schedule to

the Ref. No. 39/2002 concerns with an issue as to the procedure of the domestic enquiry and punishment towards workman Rameshwar Pd., Clerk-Cashier. So on admission of the Union representative concerned, the domestic enquiry together held against the all the four workmen (along with other arm-guard Medini Singh) was held as fair and proper, the question of its procedure as raised by the workman Rameshwar Pd. automatically stood answered irrespective of argument of the Union's Representative at their point.

11. Next comes the point of punishments awarded to the workmen concerned in their respective cases.

In the Ref. Case No. 35/2000, Mr. B.Pd., the Ltd. Union Union Representative, submits that these three workmen-S/Shri Babu Ram, Head Peon, Vijay Kr. Sharma, Driver and Ram Janam Rai, Armed Guard were though held not guilty by the Enquiry Officer in his finding (dateles, Ext. M-22) for their charges (the chargesheets Ext. M-12, 7 & 1 respectively of gross misconduct under clause 19.5 (J) of the 1st Bipartite Settlement dt. 19.10.1966, yet punished with 'warning under clause 21(iv) (f) of the said settlement by Dy. Chief Regional Manager/Disciplinary Authority (hereinafter referred as DCRM/DA as per his punishment orders all dt. 28.11.2000 (Ext. M-15, 3 and 9 respectively) on the basis of his substituted findings over the charges proved without considering their pleas of innocence. The DCRM/DA also observed the above punishment without prejudice to the Bank's right to recover from each of them the loss caused in the matter. Their punishment was also confirmed as per the orders No. 437, 436 & 438 dt. Nil (Ext. M-18,6 & 11) of the Appellate Authority respectively.

10. Likewise the submission of Mr. B.Pd., the Union Representative for the workman Rameshwar Pd., Clerk Cashier, (Now Retd.) concerning the Ref. Case No. 39/2002 is that out of three charges (i) his failure to ensure safe keeping of the keys of the 3 locks of three boxes of the remittance cash and delivery of cash short of Rs. 50,000 (out of four lacs) (ii) the exposure of the entire remittance to risk and (iii) failure to ensure built money, the Enquiry Officer found only the charge 1 proved, and rest two charges 2 and 3 unproved against workman clerk-cashies Ramesh Pd. in his findings (Ext. M-8). But the Disciplinary Authority concerned after his observance with his substituted finding about the charges No. I and III as proved punished him with 'bringing him to lower stage in the scale of pay by two stages and warning under clause 21(IV)(C) and (F) of the Bipartite Settlement. Observing without prejudice the Bank's right to recover from him the loss caused in the matter. As per his punishment order dt. 28.11.2000 (Ext. M-3) in his aforesaid reference Case No. Ref. 39/2003 without considering the innocence of the workman and the sole liability of the cash remittance official for give Bait money to him. The punishment imposed on him is alleged to be highly puniciative in nature & excessive in character.

11. In quick response, Shri Jitendra Kumar, the

Manager (I/R) as the Representative of the Management has contend that all the punishments of these workmen in their respective case concerned were quite proper & appropriate in view of their guilt concerned. Further contention of Ld. Resprsentative for the Management is that the Bank has inherent right to effect a recovery of the loss for their negligence as per Circular No. 17th Jan., 1980 as well as u/s 7(2)(c) of the payment of wages act in the duly administrative action. Mr. Prasad, the Ld. Representative for the workman in his reply has urged that there was no such pleading of the Management, and moreover the factory act is not applicable to the case.

12. On perusal & appreciation of the materials on the both case records of the Reference Cases concerned in view of the Sec. 11 A of the Industrial Disputes Act in 1947, I find the following facts:—

(i) That in respect of punishment of warning as well as recovery of Rs. 10,000/- per capita from three workmen Babu Ram, Vijay Kr. Sharma, Ramjanam Rai (all class IV staff) related to the Schedule to the Ref. No. 35/2002, the Disciplinary Authority concerned with his observations/ substitute findings about the halting of the Vehicle (Cash Van) twice unwarrantedly and unjustifiedly was pleased to award them with the warning as per bipartite settlement. Whereas the punishment to the workmen Rameshwar Pd., Staff clerk-cashier is bring down the lower stage in the scale of pay by two stages and warning under clause 21(IV)(C) & (F) of the bipartite settlement for two charges (1) & (3), i.e. his failure to ensure safe keeping of keys of the locks of remittance boxes and delivery of cash short Rs. 50,000/- at Buxar Branch, his failure to ensure to carry Baitmoney in the case of Ref. 39/2002.

(ii) But seen look at the statements of all the workman concerned in the domestic enquiry the common Enquiry Reports and their punishment orders reveal that they had safely carried and delivered the cash (Rs. 40 Lacs) and the entire cash was kept in the safe of Buxar Branch was per receipt issued by the Asstt. Manager concerned over the Cash Remittance Receipt (Ext. W.1). But lateron, the Receipt bears its striking off over the “received Rs. 40 lac” under his signature, and later on the endorsement of Rs. 39,50,000/- received under the signatures dt. 22.4.1998 of the Asst. Manager D.R. Mali and the Clerk-cum-Cashier D.K. Ojha both of Buxar Branch. The Receipt Scroll Book dt. 23.4.1998 (Ext. W.2) of the Buxar Branch as proof of the receipt of the cash short of Rs. 50 thousands under their signatures but the alterations of its voucher original Serial Nos. 1 to 39 as 1 to 32 speaks in volume.

(iii) Admittedly, two criminal cases firstly by the Buxar Br. against the workman and secondly on complaint of workan Rameshwar Pd. both pending in the Court of Buxar.

13. In the light of the aforesaid discrepancies it is evident that the punishment orders all dt. 28.11.2000 of the

Disciplinary Authority (D.A.) (Ext. M-15,3,9) in the Ref. Case No. 35/2002 towards workmen Sri Babu Ram Sub-Staff, as Sepoy, Sri Vijay Kr. Sharma, Driver, and Sri Ram Janam Rai, Armed Guard respectively and that of the Disciplinary Authority (Ext. M-3 in the Ref. Case 39/2002) against Sri Rameshwar Pd., the clerk-cashier *prima facie* appear to be wide off the factual reality of their cases concerned. Therefore, all the punishment of the workmen concerned are liable to be set aside.

Under their circumstances I hold and accordingly respond to the schedule of the Ref. Case as such: that action of the Management of Bank of India in punishing S/ Shri Babu Ram, Head Peon, Vijay Kumar Sharma and Ram Janam Rai, Armed Guard with warning and giving order to recover Rs. 10,000/- cash is quite illegal and unjustified. Hence, each of them entitled to the refund of his recovered said amount immediately concerning their Ref. Case No. 35/2002 and in relation to Ref. Case No. 39/2002, that the domestic enquiry conducted by the Management of Bank of India against Sri Rameshwar Pd., Cleark-cashier (in view of his admission) was held as per prodecure and in consonance with the principle of natural justice, but the punishment awarded thereafter in proportion of the charges as alleged was quite unjust, rather perverse so the workman Rameshwar Pd. is entitled to his pay as his pay scale with consequential benefits (till his superannuation).

KISHORI RAM, Presiding Officer

नई दिल्ली, 9 फरवरी, 2012

का०आ० 899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रीरीय क्षेत्रीय ग्रामीण बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचाट (संदर्भ 12/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9.02.2012 प्राप्त हुए था।

[सं० एल०-12021/162/2005-आई०आर०(बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 9th February, 2012

S.O. 899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award Ref. 12/2006 of the *Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad* as shown in the Annexure, in the industrial dispute between the management of *Giridih Kshetriya Gramin Bank*, and their workmen, received by the Central Government on 09.02.2012.

[No. L-12012/162/2005-IR(B-I)]
RAMESH SINGH, Desh Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No.2)****AT DHANBAD****PRESENT**

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 12 OF 2006

PARTIES: Employers in relation to the management of Giridih Kshetriya Gramin Bank and their workman.

APPEARANCES:

On behalf of the workman: Shri Awinash Kr. Singh,
Workman himself.

On behalf of the management: Mr. R.K. Singh, Pers.,
Manager

State: Jharkhand Industry: Banking.

Dated, Dhanbad, the 19th Jan., 2012

AWARD.

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-12012/162/05-IR(B-I) dt. 17.3.2006.

SCHEDULE

"Whether the action of the management of Giridih Kshetriya Gramin Bank, Giridih in awarding punishment of degradation of 10(Ten) lower stages in incremental scale from the date of order *vide* order dated 15.10.2001 of the Chairman & Disciplinary Authority to Sri Awinash Kumar Sinha, Staff/Clerk-Cashier is justified (though the charges No. 3 was partly proved and charges no. 4 not proved amongst five charges)? If not, to what relief the concerned workman is entitled to?"

2. The case of the sponsoring union concerned is that workman Awinash Kumar Sinha has possessed all along unblemish record of his service at Giridih Kshetriya Gramin Bank. He is presently posted as Clerk-cum-Cashier at Bengabad Branch in Giridih District. He was the founder General Secretary and is presently the President of the association. But the management arbitrarily and biasedly dealt with him by unjustifiably transferring him by Sri Jagdish Pd., the General Manager of the Bank from Jamua Branch, Giridih to Dantu Branch in Bokaro District, where financially depriving him of receiving cash/key allowance as contrasted with his Junior Cashier, relieving him of handling the cash even on his deputation at the then

Branch, and prohibiting him to proceed on leave without sanction from the Head Office. He was *mala fide* issued a false and frivolous chargesheet by the Chairman of the Bank. He submitted his reply/explanation to the chargesheet satisfactorily, but the Management appointed a biased Enquiry Officer (E.O.) to complete the empty formalities in the departmental enquiry, which was held irregularly in utter violation of the principle of natural justice, as he was given neither the relevant documents nor full opportunity to cross-examination the Management's witness, as well for his defence. The finding of the Enquiry Officer unbased on evidence was perverse. Despite the charges unproved, the management/the Chairman of the Bank also the Appellate Authority as per order dt. 15.10.2001 with degradation of 10(ten) lower stage in incremental scale punished him though he had represented. The issuance of the chargesheet and order of punishment is ipso-facto illegal and void ab initio. At last the union raised the industrial issue before the A.L.C. (C), Dhanbad, which failed for the anti-labour attitude of the Management. So the action of the Management of Giridih Kshetriya Gramin Bank towards the workman was neither legal nor justified rather vindictive.

3. The Union in its rejoinder for the workman has categorically denied and pleaded that the workman was transferred in the year 1995 but for no misconduct. The same charges were again levelled against him by chargesheet dt. 9.5.1997. The chargesheet, appointment of Enquiry Officer and punishment were issued by the same authority. So it was neither fair no proper rather illegal.

4. Whereas challenging the maintainability of the case, the contra pleaded of the Management with specific denials is that Giridih Kshetriya Gramin as an establishment of the Government of India has its accordingly named Regulation 1985. The workman while posted as Clerk-cum-Cashier at bank's Jamua Branch from 8.3.1995 to 7.6.1996 had committed gross misconduct under Regulation 19 read with Regulation 30(1) of the said Bank Regulation. He was served upon the Memorandum/Letter No. HO/VIG/186/96-97, dt. 4.7.1996 by the Management for his explanation within 15 days. The workman submitted his explanation dt. 20.9.1996 after a lapse of more than two months, denying the allegation levelled against him. Thereafter, the Management issued him a chargesheet No. HQ/IR/0079/97-98 dt. 9.5.1997 for submitting his written statement of defence in 15 days. After considering his written statement and finding it unsatisfactory, the Management appointed the Enquiry Officer to conduct the domestic enquiry in accordance with the principle of natural justice. The Enquiry Officer conducted the enquiry in presence of the workman and his defence representative R.K. Sinha, the Zonal Secretary of the Bank of India Employee Association (Bihar State), who cross examined the Management's witnesses. On submitting the Enquiry Report by the Enquiry officer, having found the charges 1, 2 and 5 proved, charge No. 3 partly proved and charge No. 4 unproved, the

Mangement issued the second show cause notice to the workman for personal hearing at the point of punishment. The Disciplinary Authority after giving full opportunity and personal hearing the workman on 14.5.2001 passed an order of punishment which was proportionate to the proved charges against the workman. The Board of Director of the Bank, the Appellate Authority confirmed the punishment by dismissing the appeal of the workman. The Enquiry was fairly and proper conducted as per the principle of natural justice.

5. The Mangement categorically in denialful rejoinder pleaded that since out of two employees working at the Branch, one was handling cash, no question arise to allow the workman to take charge of cash and key. He was granted leave whenever he applied for it. The Enquiry Report was based upon the materials produced in the Enquiry. The punishment order was legal and justified as per the Regulation of the Bank.

FINDING WITH REASONING

6. After due consideration of the materials oral and documentary, as produced by the Mangement and the workman through their own witnesses MW. 1 Onkarnath Singh, the Branch Manager of Jamua Branch as the Enquiry Officer, MW. 2 Shamim Akhatar, the Manager of the Same Branch, for the Management, and WW.1 Awinash Kr. Sinha, the workman himself for the Union at the preliminary point, the Tribunal as per order dt. 24.8.2011 held the domestic enquiry quite fair, proper and according to the principle of natural justice in respect of the charges levelled against him.

Thus, the case directly came up for hearing argument on the point of punishment inflicted upon the workman for the aforesaid proved charges Nos. 1, 2 and 5 and charge No. 3 partly proved.

7. Mr. Bharat Bhusan Pd., The Regional Secretary, Union Representative for workman Awinash Kr. Sinha, submits that the amount of the loan for the chargesheet was already recovered but there is no whisper of it in the chargesheet, since there was full recovery of its prior to awarding him punishment, there was no financial loss to the Bank; that whenever the borrower went to deposite his loan amount, he was refused by the Bank Manager, who later on accepted his cheque for Rs. 5,600/- after keeping it in sundry credit A/c without any justification and any direction of the management. Further it has been urged on behalf of the Union's Representative that as for the other charges namely charge No. 2 & 5 and charge 3 (partly proved), it apparently show unintentional mistakes corigible in natural course of conduct in the banking; affairs but the awarding the workman with the punishment of degradation to ten lower stages in incremental scale was quite unfair and improper in view of allegedly proved charged. Whereas Mr. Ravindra Kr. Singh, the Officer of the Jharkhand Gramin

Bank, presently the Br. Manager on Chas Branch as the Representative for the Management has categorically contended that in view of the aforesaid major misconduct for the said charges, the aforesaid punishment awarded by the Disciplinary Authority in consolidated manner was quite just in accordance with Regulation 13 (i) (c) of Giridih Keshtriya Gramin Bank Staff Services Regulation 1985.

8. On the perusal of the materials available on the case record as produced in course of disciplinary proceedings against the workman, I find following facts as under:

(i) Out of the four misconducts as per the alleged proved charges No. 1, 2 and 5 and charge No. 3 (Partly proved), misappropriation of Rs. 10,000/- (Rupees seven thousand five hundred sanctioned loan and Rs. two thousand five hundred) deposited by the workman in S.B. A/c No. 763 in fictitious name of Shri Gokul Rana through its withdrawal by the workman himself appears to have been responded by the workman that Rs. 3,400/- was recovered in the aforesaid A/c in respect of the Charge No. 1.

(ii) that all the rest three misconducts in the terms of charges No. 2, 5 and partly proved charge No. 3 appears to be admittedly mistake but intentional as stated by the workman in course of the domestic enquiry proceeding concerning the allegation of intercepting Rs. 19.35 debit balance by posting credit entry of Rs. 30/- in his A/c, likewise not fractually posting but marking as posted without cancellation of the withdrawal of Rs. 7,000/- and Rs. 1,000/- by Sri Dayanand Pd. Sahu and Sri B.N. Verma against their withdrawal forms at the relevant different time in their respective A/cs and lastly the payment of Rs. 70/- to have been received on 22.11.1995 against his withdrawal from in his S.B. A/c No. 680 without posting it followed by its conciliation in respect of the aforesaid three charges respectively which are related to the alleged misconducts under Regulation 19 read with Regulation 30 (i) of the aforesaid Regulation 1985. It will not be less remarkable to note the aforesaid latter 3 alleged misconduct of the workman are related to mistake of unposting and non-cancellation of withdrawal forms of the customer concerned which may be expected of a man like the workman in the natural course of banking services towards the customer concerned and such mistakes were not intentional.

9. Consequent upon the show cause punishment notice dt. 1.9.2001 (Ext. M-9), the Chairman-cum-Disciplinary Authority as per order of punishment dt. 15.10.2001 (Ext. M.11) awarded the punishment to the workman with degradation to ten lower stages in incremental scale under Regulation 30(c) of the aforesaid Regulation 1985 for charges No. 1 & 2, stoppage of one increment under Regulation 30(b) and reprimand under Regulation 30(a) of the said Regulation for charge No. 3 (partly proved) and No. 5 respectively w.e.f. the date of the said order which

were highly shocking and disproportionate to the aforesaid allegation concerned. Since punishment order is based not on reasoning, it is liable to set aside, as one of the charges appears to be concretely proved.

In view of the aforesaid findings it can be safely held that the action of the management of Giridih Kashtriya Gramin Bank in awarding punishment of degradation of 10(Ten) lower stages in incremental scale from the date of order dt. 15.10.2001 of the Chairman & Disciplinary Authority to Shri Awanish Kumar Sinha, Staff/Clerk-Cashier is quite unjustified not only in facts but also in laws. Therefore, the concerned workman is entitled to upgradation of the aforesaid ten lower stages in incremental scale with all consequential benefits w.e.f. 15.10.2001. The Management concerned is directed to implement the award within one month from the receipt of the award after its publication in the Gazette of India by the Central Government.

KISHORI RAM, Presiding Officer

नई दिल्ली, 9 फरवरी, 2012

का.आ. 900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 44/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2012 को प्राप्त हुआ था।

[सं. एल-12012/33/2008-आईआर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 9th February, 2012

S.O. 900.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 44/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between The employers in relation to the management of State Bank of India, and their workman, which was received by the Central Government on 07.02.2012.

[No. L-12012/33/2008-IR (B-I)]
RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISTPUTE CASE NO. 44/2008

Date of Passing Award—27th January, 2012

Between:

The Assistant General Manager,
State Bank of India, Bhubaneswar
Main Branch, Bhubaneswar,
Distt. Khurda (Orissa), Bhubaneswar. (Orissa)

... 1st Party-Management.

(And)

Their workman Sri Prakash Chandra Dash,
Qrs. No. VR 5/1, Kharvela Nagar, Unit-3,
Bhubaneswar. (Orissa)

... 2nd Party-Workman.

Appearances:

Shri Alok Das ... For the 1st Party-Management.
Authorized Representative

None. ... For the 2nd Party-Workman.

AWARD

An industrial dispute existing between the employers in relation to the management of State Bank of India and their workman has been referred to this Tribunal/Court by the Government of India in the Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide their letter No. L-12012/33/2008-IR(B-I), dated 02.06.2008 to the following effect:—

Whether the action of the management of State Bank of India in relation to their Main Branch, Bhubaneswar in terminating the services of Sri Prakash Chandra Dash, w.e.f. 30.09.2004, is fair, legal and justified? To what relief is the workman concerned entitled?

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on temporary/casual/daily wage basis from October, 1990 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 249 days' work in each year he was terminated and refused employment from 30.10.2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management is refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He was also not given regular appointment while in service. He therefore brought the matter in to the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 23.2.2005. Conciliation

proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asstt. Labour Commissioner (Central), Bhubaneswar of the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 47 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the Separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he was discontinued from service on 30.9.2004 and was signing bogus vouchers is not correct. His services were discontinued much prior to the expiry of the panel as in hereafter stated. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. It is denied that he had joined the Bank from October, 1990 and was performing the duty, which is regular and perennial in nature. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman had never completed several years of continuous service in the Bank nor he had completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for an interview along with all other eligible persons in the year 1993. As he was not found successful in the said interview he could not be absorbed in the Bank's service. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the

Bank's service due to expiry of the panel on 31st March, 1997 filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Shri Dash were terminated much prior to the expiry of the panel his claim has become stale by raising the dispute after lapse of a period of 10 years. It is a settle principle of law that delay destroys the right to remedy. Thus raising the present dispute after 10 years of alleged termination is liable to be rejected.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case no. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for more than 240 days as enumerated under section 25-F of the Industrial Disputes Act?

3. Whether the action of the Management of State Bank of India in relation to their Main Branch, Bhubaneswar in terminating the services of Shri Prakash Chandra Dash, with effect from 30.9.2004, is legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not produce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself of his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering

the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen is entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 47 in Annexure-A to the abvoe reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/ 2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE No. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he was appointed in October, 1990 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "the disputant was working intermittently for few days in our branch on daily wage basis in exigencies He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued with effect from 30.9.2004, but stated that "In-fact the workman left working in the branch since June, 1991". Thus he had not worked after June, 1991. The 2nd

Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has not right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is thus decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India in relation to their Main Branch, Bhubaneswar in terminating the services of Sri Prakash Chandra Das with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issue No. 2 and 3 the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 फरवरी, 2012

का.आ. 901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 कि अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1356/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 16-01-2012 को प्राप्त हुआ था।

[सं. एल-12012/60/2007-आई आर (बी. II)]

शीश राम, अनुभाग अधिकारी

a valuable right to defend himself in the enquiry. The workman has further alleged that in the enquiry Presenting Officer Mr. MC Bajaj appeared as management witness. It vitiated the enquiry. The Enquiry Officer however in a totally illegal and arbitrary manner concluded the enquiry without discussing the evidence led during the course of Enquiry and held that the Presenting Officer has succeeded in proving the charge. The enquiry report was forwarded to the workman. The workman submitted his reply to the findings of the Enquiry Officer. Then the workman was issued a show cause notice dated 12.9.2003 with predetermined mind for inflicting the punishment of "dismissal without notice from the bank service" and was asked to appear before the disciplinary authority on 20.9.2003. The workman could not appear on 20.9.2003 and on the adjourned date i.e. 29.9.2003 on account of his engagement in the criminal case and on the next adjourned date 30.9.2003 on account of his illness. He had requested for adjournment on 30.9.2003 as he had been advised bed rest for 7 days and to his request letter medical certificate was annexed. The disciplinary authority adjourned the personal hearing to 6.10.2003 while the workman had been advised bed rest up to 6.10.2003 itself. The workman on 4.10.2003 informed the disciplinary authority that he is to appear before the Court on 7.10.2003 and on account of his ill-health he is not in a position to submit the reply and the same will be submitted on 6.10.2003. On 6.10.2003 the workman sent his reply dated 24.9.2003 to the disciplinary authority by post which was received in the office of the disciplinary authority on 7.10.2003 but the disciplinary authority had already passed the punishment order on 6.10.2003. The workman requested for the reconsideration of punishment order but the same was not accepted. Therefore he filed an appeal but that too was rejected.

The workman has challenged his dismissal firstly; on the ground that the charges in the criminal case and in the enquiry were the same and as he has been acquitted in the criminal case punishment cannot be awarded in the enquiry, secondly the enquiry is vitiated as the charge-sheet was vague and the enquiry report is cryptic and non-speaking and he was not supplied the documents including handwriting expert report, thirdly; he was denied the assistance of a lawyer or member of any Union other than the one of which he was a member, fourthly; during the course of enquiry not even a single passbook or customer was produced, Presenting Officer himself appeared as management witness. He was not given any opportunity of personal hearing, and lastly; as per provisions of Bipartite Settlement punishment of dismissal of service cannot be inflicted in cases where the employee has been acquitted by the Criminal Court and the employee can only be terminated with three month's pay and allowances in lieu of notice and he shall be deemed to have been on duty during the period of suspension and shall be entitled to full pay and allowance. The workman has alleged the

punishment discriminatory also, as in the matter, the officer incharge of the Extension Counter and the Peon had also been suspended. Peon died but no further action was taken against the officer incharge. He has requested for his reinstatement with all consequential benefits of continuity in service, fixation of pay at correct stage and grant of arrears or in the alternative for revocation of suspension with payment of full pay and allowance along with interest for the suspension period.

The management contested the case and filed a reply to the claim statement. It was denied that the charge sheet was on the same allegation which was the subject matter of the criminal case. It was contended that after filing the FIR, the number of claimants in whose accounts the fraud had been committed by the workman continued to increase and on a thorough probe, number of accounts were detected later on. Such accounts could not be taken into consideration at the time of the lodging of the FIR. Charge sheet was served upon the workman in respect of those 56 accounts which, though part of the recovery suit, were not the subject matter of FIR/criminal case. Hence the disciplinary proceedings were initiated on a different set of facts. Regarding the allegation that he was not allowed to be represented through an advocate or through any Union other than the one of which he was a member, it is contended that as per practice, advocates are not allowed to defend the case in the departmental enquiry. The Presenting Officer appointed by the bank was just an ordinary officer of the bank and not a legally trained person. However, every opportunity was provided to the workman to engage union representative as his defence representative in terms of the provisions of the Bipartite Settlement and to cross-examine the witnesses produced by the management. Regarding the evidence of the Presenting Officer it was contended that there is no bar on the Presenting Officer to appear as a management witness. The workman was granted full opportunity to cross-examine the P.O. and the latter was cross-examined by the workman. The evidence put forth before the Enquiry Officer in the form of documents and deposition of the witnesses were duly discussed by him in his report. In the enquiry the bank produced the photocopies of passbooks since the originals were exhibited in the criminal case. The copies of ledger-sheets as well as of passbooks show the difference of amounts in them and the workman was given full opportunity to go through the passbooks which were exhibited by the bank during the course of enquiry. The handwriting expert report was not a part of the management evidence. The handwriting of the workman was proved by oral evidence of the witnesses who were well aware with the handwriting of the workman. Hence no prejudice was caused to the workman by not supplying the expert report. In the show cause notice dated 12.9.2003 the penalty of dismissal without notice from the bank's service had been proposed only and it is wrong to say that it was proposed

with predetermined mind. Personal hearing in the matter was fixed for 20.9.2003 but acceding to the request of workman 29.9.2003 was fixed for the purpose. The workman *vide* his letter dated 27.9.2003 requested for another date on account of his involvement in a Court case and the disciplinary authority acceding to his request again, fixed the date of personal hearing for 30.9.2003. But since the workman had been trying to delay the proceedings, it was made clear to him that in case he was indeposed, he should submit a certificate to this effect from Chief Medical Officer, Panipat but the workman did not care to follow the instructions and instead of submitting a certificate from CMO he submitted a certificate from a private practitioner. The disciplinary authority however provided him time to appear for personal hearing on 6.10.2003. It has been contended that it is very mystifying on the part of the workman that when he had prepared the reply to show cause notice on 24.9.2003 then why he chose to send it only on 6.10.2003 the day when the disciplinary authority had already passed the punishment order. The workman was adopting delaying tactics. The enquiry officer conducted the enquiry as per procedure and according to the principles of natural justice. The workman was given ample opportunity to appear for personal hearing but he intentionally did not attend the personal hearing. The disciplinary authority was convinced that he was trying to delay the proceedings. So the former imposed the penalty of dismissal after appreciating all the evidence on record. The appellate authority however did not grant personal hearing as the workman in his appeal had not requested for the same. The act of the appellate authority is in conformity with Clause 14 of HRD Circular No. 86 dated 5.6.2002. The management also denied that the punishment is discriminatory as no action was taken against the officer incharge Sh. Arun Singla. As a matter of fact, Sh. Arun Singla was burdened with penalty of bringing down his salary permanently by one stage in the scale of pay in which he was placed at that time. It was thus submitted that the enquiry was conducted as per provisions of the Bipartite Settlement and according to the principle of justice, the workman was given every opportunity to defend his case, he was allowed to bring his defence representative as per terms of Bipartite Settlement; he was given ample opportunity to inspect the original of documents tendered by the Presenting Officer and to cross-examine the witnesses who confirmed that the entries are in the handwriting of the workman. The workman was also provided ample opportunity to appear for personal hearing. He was provided the enquiry report on which he submitted his comments also. The workman was inflicted the punishment of dismissal without notice keeping in view the gravity of the gross misconduct on his part. He is not entitled to any relief.

The workman filed a replication to the written

statement to allege that the period of the alleged offences which were the subject matter of the FIR/criminal case as well as of the recovery suit and the charge sheet in the disciplinary proceedings are the same and the sole motive of the bank is to harass and humiliate him by involving him into multiple cases. He denied that the disciplinary proceedings were initiated a different set of facts. Rest of the replica is almost repetition of the claim statement.

From the pleadings of the parties following issues arise for consideration in this matter.

1. Whether the enquiry conducted by the management in this case is fair and according to the principles of natural justice?

2. Whether the workman is entitled to exoneration in this matter on account of his acquittal in Criminal Case No. 161/1 of 1995 and what is the effect of the judgment in Civil Suit No. 297 of 1997?

3. To what relief is the workman entitled?

In support of his case the workman filed his affidavits and relied on certain Annexures to his claim statement. The management did not lead any evidence. In fact on 3.6.2011 on the request of management counsel the case had been adjourned to 26.7.2011 for the evidence of the management with a direction that copy of the affidavit of management witness will be supplied in advance to workman but on the next date none appeared for management and it was put *ex parte*. On the next date of hearing also the management continued to be *ex parte*. Hence the learned counsel for the workman could only be heard.

I went through the evidence on record and considered the arguments advanced by the learned counsel for the workman. My findings on various issues are as follows.

Issue No. 1

It was argued by the learned counsel for workman that the enquiry in the case is vitiated as the charge sheet was vague and the workman was also denied the assistance of a lawyer or a member of any union other the one of which he was a member. Workman was also not supplied the documents including the handwriting expert report.

In this regard it may be noted that the charge sheet has been filed by the workman himself as Annexure P3 of his claim statement. Annexed to this charge sheet is a list of account numbers along with the name of account holders, the date of the amounts received for deposit, amount received and payment made in the accounts. These are 56 in number. Hence it cannot be accepted that the charge sheet was vague. The charge sheet contains sufficient information about the nature of the allegations which the workman was required to meet.

As per Clause 19.12 of the First Bipartite Settlement dated 19.10.1966 quoted in the claim statement the workman is entitled to be defended by a representative of a registered

trade union of the bank of employee of which he is a member or with the permission of the bank he may be defended by a lawyer. The workman has alleged that the union of which he was a member refused to defend him in the matter.

He was not entitled to be defended by a lawyer as a matter of right and was dependant for this on the bank's permission. As it has been stated by the bank in its written statement the workman was not provided the facility of lawyer as the Presenting Officer was not a law knowing person. He was simply an officer. I am therefore of the opinion that the bank was justified in refusing the facility of a lawyer to defend workman's case. No prejudice was caused to the workman by not permitting him to engage a lawyer.

It was further argued by the learned counsel for the workman that the documents demanded by the workman as per details given in Annexure P6 of the claim statement were also not supplied to the workman.

The enquiry report indicates that except the withdrawal slip passbook relating to SF Account No. 1504, 3594 and 3614 all other documents had been provided to defence. The documents not provided were not available. The bank in its written statement has pleaded that in the enquiry only the photocopies of the passbook could be produced since the original were exhibited in the criminal case, but copies of ledger sheets as well as of passbooks were produced during the course of enquiry to show the difference of amount in them and the workman was given full opportunity to go through the passbooks which were exhibited by the bank during the course of enquiry.

As per law laid down by the Hon'ble Supreme Court in **Syndicate Bank Vs. General Secretary, Syndicate Bank and Staff Association and another 2000 I LLJ 1630** the principle of natural justice required to be observed are that:—

1. Workman should know the nature of the complaint or accusation.
2. He must have an opportunity to state his case.
3. Management should act in good faith which means that the action of management should be fair, reasonable and just.

In the present case the charge sheet along with the list of account number, name of account holders, the date of amount received, amount received and payment made in the accounts had been served upon the workman. Hence he had sufficient knowledge of the nature of the complaint or accusation. He had been provided the opportunity to cross-examine the witnesses and he did cross-examine them. He was provided the opportunity to examine the documents proposed to be produced against him in support of the charge and also an opportunity to state his case. The enquiry report indicates that the workman though did not

examine any witness in defence but submitted 11 documents in his defence. There is no evidence that there was any act of bad faith or malafide on the part of the management in taking action against the workman. It is therefore clear that the enquiry was fair and according to the principles of natural justice.

The learned counsel for workman also argued that there is discrepancy in the details of the accounts given in Annexure 1 of the charge sheet. At Serial No. 39 there is mention of transaction dated 31.10.1994 when the workman was under suspension and at Serial No. 47 a transaction is mentioned of 15th August, 1994 which was a public holiday.

It is important to note here that the charge against the workman is that he made entries in the passbooks of the payment received and made to the customers but did not enter the same in the ledger of the bank. The management led the evidence in the enquiry that the entries are in the handwriting of workman. It has nowhere been pleaded by the workman that these entries were the creation of any other employee. Secondly, on the basis of one or two discrepancies the allegation about other more than 50 entries cannot be held false or untrue.

The learned counsel for workman also argued that no account holder came in evidence to prove the charge against the workman and Presenting Officer himself appeared as management witness to prove the handwriting of the workman. In this regard the judgment of the Hon'ble Supreme Court given in **B.C. Chaturvedi Vs. Union of India and others and Union of India and another Vs. B.C. Chaturvedi 1996 (72) FLR 316** may be cited, wherein the Apex Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made to ensure that the individual receives fair treatment and not to ensure what the authority reaches is necessarily correct in the eyes of the Court. Therefore the Court/Tribunal in exercise of the power of judicial review cannot re-appreciate evidence and arrive at its own findings. It can interfere where the authority held the proceedings against the delinquent employee in a manner inconsistent with the rules of natural justice or in violation of statutory rules, prescribing the mode of enquiry or where the conclusion reached by the disciplinary authority is based on no evidence or it is such that no reasonable person would have ever reached.

It cannot be said in the present case the findings recorded by the Enquiry Officer or the decision taken by the disciplinary authority is perverse or against the weight of the evidence. So there is no ground to interfere in the findings of the Enquiry Officer or of disciplinary authority.

The enquiry report cannot be said to be cryptic and non-speaking. It contains the details of the documents

relied on by the parties, the list of management witnesses, the view of the Presenting Officer, written brief of workman and findings of the Enquiry Officer. The enquiry report contains the critical discussion of the evidence.

It also cannot be successfully argued that the workman was not provided opportunity of personal hearing. The enquiry report indicates that the workman himself avoided the personal hearing on one pretext or the other. It was really very strange on his part that though he had prepared his reply to the show cause notice on 24.9.2003 but send it only on 6.10.2003 when the disciplinary authority had already passed the punishment order. Thus he has to blame himself for not availing the opportunity of personal hearing.

Thus it is held that the enquiry conducted by the management in this case is fair and according to the principles of natural justice and there is no infirmity in the process of decision-making. Issue No. 1 is decided against the workman.

Issue No. 2

It was argued on behalf of the workman that charges in the criminal case No. 161/1 of 1995 and those contained in the charge sheet in the departmental enquiry were the same and the workman has been acquitted in the criminal case, hence the management was not justified in holding him guilty of the charge in the domestic enquiry.

It may be noted that the bank has disputed the fact that the charges in the two proceedings were the same. It has been contended that after filing the FIR the number of claimants in whose accounts the fraud had been committed by the workman continued to increase and such account could not be taken into consideration at the time of lodging the FIR.

Interestingly the workman in his replication deviates from its earlier stand and instead of pleading that the charges in the two proceedings were the same, he alleged that the period of the alleged offences which were the subject matter of the criminal case as well as of the recovery suit and of the charge sheet in the disciplinary proceedings are the same.

In this regard it is well settled that the standard of proof in the criminal proceedings and the disciplinary proceedings is different. In the criminal case the charges are to be proved beyond any reasonable doubt, while in departmental proceedings on the preponderance of probabilities. In criminal proceedings the prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct but the enquiry in departmental proceedings relates to conduct or breach of duty and to punish under relevant statutory rules to effectuate efficiency in public administration. It is therefore clear that

the workman is not entitled to any relief on the ground of his acquittal in criminal case.

However the effect of judgment of Civil Suit No. 297 of 1997 is worth consideration. The workman himself has filed a copy of judgment in Civil Suit No. 297 of 1997, it is Annexure P25 of his claim statement. As it appears from the judgment it was a suit filed by the bank for the recovery of Rs. 592882/- with interest and cost from the workman with the allegation that the workman had though received the amount from customers of the Saving Fund Account but did not deposit the same in the bank and did not make the entry in the ledger of the accounts maintained by the bank in its ordinary banking business and similarly he did not issue counter files of the depositing slips and he used the said money for his personal use by crediting the amount in the ledger of the accounts in different dates.

The suit was decreed and an appeal of the workman against the judgment also failed. The judgment of the Supreme Court in **Jasbir Singh Vs. Punjab and Sind Bank and others 2007 I LLJ 481** shows that judgment of Civil Court may affect the result of departmental enquiry. In that case a Peon working in bank was charged with criminal charges, disciplinary proceedings ended holding charges proved which was confirmed by the High Court. The Hon'ble Supreme Court setting aside both the orders held that High Court failed to take note of the decision of the Civil Court which held that the bank failed to prove embezzlement charges against the workman and hence impugned order and judgements could not be sustained.

I am of the view that conversely should also be true. The judgement in civil case goes to support the punishment awarded to the workman by the disciplinary authority. Issue No. 2 is decided accordingly against the workman.

Issue No. 3

From the above going discussion it is thus clear that the workman is not entitled to any relief. The counsel for the workman argued that the punishment accorded to the workman is discriminatory as no action was taken against another official Arun Singla involved in the matter.

It has nowhere been pleaded that charge against the workman and said Arun Singla was the same. The management in its written statement has informed that the Arun Singla the officer incharge had been given penalty of bringing down his salary permanently by one stage in the scale of pay in which he was placed at that time. Therefore it cannot be successfully argued that the workman was discriminated against.

So far as the relief for the revocation of suspension with payment of full pay and allowance is concerned, it is beyond the terms of reference and there is no justification

for this relief also. In the result the claim fails. The workman is not entitled to any relief. The action taken by the Regional Manager, Punjab National Bank, Zonal Office, Chandigarh in terminating the service of the workman is just, fair and legal. Let two copies of the Award be sent to Central Government for further necessary action.

Ashok Kumar Rastogi, Presiding Officer

नई दिल्ली, 9 फरवरी, 2012

का०आ०. 902.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंध तत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/81/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/1/2012 को प्राप्त हुआ था।

[फाइल सं एल-12012/138/1993 आई आर (बी II)]
शशि राम, अनुभाग अधिकारी

New Delhi, the 9th February, 2012

S.O. 902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (*Ref. No. CGIT/NGP/81/2003*) of the Central Government Industrial Tribunal/Labour Court, *Nagpur* now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **UCO BANK** and their workman, which was received by the Central Government on **16/01/2012**.

[File No. L-12012/138/1993-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/81/2003 Date: 04.01.2012

Party No. 1 : The Divisional Manager,
UCO Bank, 108 Sushil Bhawan,
Blaraj Marg, Dhantoli,
Nagpur - 440 012

Versus

Party No. 2 : General Secretary,
UCO Bank Employees Association,
Plot No. 48, Kanchan Prabha,
Taty Tope Nagar, Nagpur - 440 012

AWARD

(Dated: 04th January, 2012)

In exercise of the powers conferred by clause (d) of

sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of UCO Bank and their workman, Shri D.N. Bhoge, to the CGIT-cum-Labour Court, Jabalpur for adjudication, as per letter **No. L-12012/138/1993-IR (B-II) dated 17.02.1994**, with the following schedule:—

"Whether the claim of UCO Bank Employees Association, Nagpur that the management of UCO Bank terminated the services of Shri D.N. Bhoge without complying with the provisions of Section 25-F of the I.D. Act and therefore he is entitled to be reinstated in the services of the Bank is justified? If so, what relief is the workman entitled to?"

Subsequently the reference was transferred to this Tribunal for this disposal in accordance with law.

2. On receipt of the reference, the parties were notices to file their respective statement of claim and written statement and accordingly, the union, UCO Bank Employees Association ("the union" in short) filed the statement of claim on behalf of the workman, Shri D.N. Bhoge, ("the workman" in short) and the management of the UCO Bank ("Party No. 1" in short) filed its written statement.

The case of the workman as presented by the union in the statement of claim is that the union is a registered union and the service conditions of the employees employed in UCO Bank are governed by the provisions of by-partitee settlements and the workman was initially appointed on 08.03.1990 and he was not paid wages for Sundays and holidays and was put to hard labour beyond the working hours of the Bank and the workman continued to work in Ramtek Branch upto 15.07.1991, when he was removed from employment by the Manager, without assigning any reason and in his place, another daily wager was appointed by the Bank and there was no need for the Branch Manager to remove the workman from the job, particularly when there was shortage of sub-ordinate staff in that branch and the work and conduct of the workman was satisfactory and he had been instrumental in bringing deposits too for the branch and due to his illegal and unauthorized termination from service, the workman approached the union and the union raised the dispute before the ALC(C), Nagpur and Party No. 1 took a plea in the letter dated 08.02.1993 that the workman had never worked with them and he worked for a limited period and the Party No. 1 was making payment to the workman on vouchers, which were got signed by him under the pretext of having swept the branch, malafide intention and as the conciliation failed, failure report was sent to the Central Govt. and the Central Govt. has referred the dispute for adjudication to the CGIT. The union has prayed for the reinstatement of the workman in the service along with all benefits following there from.

3. The Party No. 1 in its written statement has pleaded *inter-alia* that the workman was not its employee and he did not work as contended. The workman was working at Ramtek Branch, but he was not an employee and he was doing the work of sweeping and dusting the Bank premise at extension counter, Ramtek, for which he was being paid Rs. 10/- per day, whenever he was carrying out the work and the work of sweeping and dusting was not taking more than one hour in a day and there was no reasons for entering his name in the muster roll and other records of the Bank as he was doing such limited work, there was no question of his removal from service, as he was not an employee of the Bank.

It is further pleaded by the Party No. 1 that there was no question of initiating any departmental proceeding or other proceeding and there was never any malafide intention on its part and as the workman was not an employee of the Bank, there was no need of observing the formalities as contended and the recruitment policy of the Bank makes it incumbent to follow the norms and procedure as provided and whenever permanent vacancies exist, applications are called for through the Employment Exchange and the appointment is done as per the norms and procedure fixed for the purpose of the recruitment.

4. In support of his claim, the workman has examined himself as a witness. His examination-in-chief-is on affidavit. In his evidence, he was stated that he was employed by the Bank as a Peon on daily wages @ Rs. 10/- per day *w.e.f.* 08.03.1990 and he worked for more than 16 months uninterruptedly up to 15.07.1991 and he was removed from service without any reason.

5. Though the Party No. 1 had filed the evidence of witness, Shri Dharamdas Kisanji Lokhande on affidavit, in support of its claim, subsequently the witness was not produced for cross-examination and as such, the evidence of the said witness was expunged as per order dated 13.07.2011.

It is necessary to mention here that since 03.08.2010, both the parties remained absent and did not appear in this case and as such, the case was closed on 07.09.2011 and was posted for award.

6. It is the admitted case of the parties that the workman was engaged on daily wages basis. According to the workman he worked with Party No. 1 from 08.03.1990 to 15.07.1991 continuously without any break and he was removed from employment by the Manager, without assigning any reason.

The case of the management is that the workman was engaged for sweeping and dusting the office premises for one hour per day, as and when required. So, the initial burden of proving that he had worked for 240 days in the preceding 12 calendar months of the date of alleged termination *i.e.* 15.07.1991 was on the workman.

7. At this juncture, I think it appropriate to mention the settled principles in this regard by the Hon'ble Apex Court in the decision reported in AIR 2005 SC 2179 (*Manager, Reserve Bank of India versus S. Mani*). The Hon'ble Apex Court have held that:

"Industrial Disputes Act, 1947 - S.s. 25 F, 25 B and 11-240 day's continuous service - onus and burden of proof with respect to - evidence sufficient to discharge - failure of employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the same burden - held, initial burden of proof is on workmen to show that they had completed 240 days of service - onus of proof does not shift to employer nor is the burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service - filing of affidavit of workman to the effect that he had worked for 240 days continuous or that the workman had made repeated representation or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden - other substantive evidence needs to be adduced to prove 240 day's continuous service - instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case."

8. Keeping the principles as enunciated by the Hon'ble Apex Court in mind, the present case in hand is to be considered.

In this case, except his own affidavit, the workman has not filed any document to show that he had actually worked for 240 days in the preceding 12 months of 15.07.1991. No other evidence has also been adduced by the workman in support of such claim. Hence, it is found that the workman failed to discharge the burden lying upon him. As the workman has failed to show that he had worked for 240 days in the preceding 12 months of 15.07.1991, the provisions of S. 25-F of the Act are not applicable to his

case and he is not entitled for any relief. Therefore it is ordered that:

ORDER

The claim of UCO Bank Employees Association, Nagpur that the management of UCO Bank terminated the services of Shri D.N. Bhoge without complying with the provisions of Section 25-F of the I.D. Act and therefore he is entitled to be reinstated in the services of the Bank is unjustified. The workman is not entitled for any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 9 फरवरी, 2012

कांआ०. 903.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अमन्यायालय नं 2, धनबाद के पंचाट (संदर्भ संख्या 90/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 16-01-2012 को प्राप्त हुआ था।

[सं एल-12012/2/232/1996 आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 9th February, 2012

S.O. 903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (*Ref. No. 90/1997*) of the Central Government Industrial Tribunal/Labour Court No. 2, DHANBAD now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BANK OF INDIA and their workman, which was received by the Central Government on 16/1/2012.

[No. L-12012/232/1996-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT:

Shri Kishori Ram, *Presiding Officer*.

In the matter of an Industrial Dispute under section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 19 OF 1997

Parties: Employers in relation to the management of Bank of India and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Mr. D.K. Verma, Advocate.

State : Jharkhand Industry : Banking.

Dated, Dhanbad, the 19th Dec., 2011.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/232/96-IR(B-II), dated 22/28.07.97.

SCHEDULE

"Whether the action of the management of Bank of India in dismissing the services of Sh. U.S. Ram, Ex-Clerk-cum-Cashier w.e.f. 25.2.94 is justified and legal? If not, to what relief the said workman is entitled?

2. The case of the workman U.S. Ram is that on his appointment as a Clerk-cum-Cashier, he joined his service in the Bank of India at Ramgarh Branch, Bhabua on 23.01.1978. Subsequently he was transferred to different branches of the Bank—Rampur (Chapra), Sisaura (Bhabua Distt) Buxar and again to Ramgarh (Bhabua district). While posted at Sisaura Branch, he though single handed yet satisfactorily worked as an alone clerk there under heavy pressure of work, in course of which two accounts miscredited on 3.9.90 and 17.9.90 but both miscredited entries were immediately rectified at the time of balancing the accounts; so there was no financial loss to the Bank. But the Acting Branch Manager of Sisaura Branch of the Bank with ulterior motive got issued by the Regional Manager, Patna, the Memo of seven allegation on 21.11.90 calling for his explanation and he submitted his reply to it on 14.2.90, denying the charges. The Regional Manager, Patna motivatedly transferred him from Sisaura to Buxar Branch in December, 1990 and on his joining, issued him his suspension order dt. 28.12.90 (which he got on 5.1.91) with four point charges but without calling for any explanation with a view to change the Head quarter during domestic enquiry. The workman was issued a chargesheet dt. 2.11.91 of six charges by the Regional Manager unjustifiably adding charge Nos. II, V and VI which were not mentioned in the suspension order, and it was simultaneously straightway ordered for holding domestic enquiry for which Sri Gurmeet Singh, the Staff Officer, was appointed as the Enquiry Officer. The Domestic Enquiry started from 2.9.92 at Panta. Meanwhile, with the abolition of the Bank's Patna Region, the new Region at Gaya came into being under the Deputy Zonal Manager, who became the Disciplinary Authority, but the Authority neither appointed nor approved the appointment of the Enquiry Officer for the enquiry. Without supply of any preliminary Report by the Management, and without examining the authority and validity of the order of the R.M., Patna, the Enquiry Officer in course of the enquiry proceeding examined S/Shri A.K. Srivastava, Manager, Sisaura Branch, A.K. Gosh Acting Temporary Manager Sisaura Branch, out of whom Mr. Srivastava and Mr. Ijaz did not say

anything whereas Mr. Ghosh is a hearsay witness. Neither the original complaint dateless one produced nor the complainant Shyam Kant Tiwary or non complainant Badri Singh examined in the enquiry. Though the refusal of the complainant to have overdrawn the amount of Rs. 1000/- was covered by the balance standing at his credit. The Enquiry Officer after the enquiry submitted his Enquiry Report to the Regional Manager, Gaya but not the Deputy Manager Bihar (North Zone) who was the Disciplinary Authority as apparent from the revocation order of suspension dt. 29.10.92. The Enquiry Report rather contradictory one devoid of finding about how misappropriation of the said amount is not based on evidence.

On the show cause Notice dt. 11.12.93 to the workman for dismissal without notice the Regional Manager Gaya as the alleged Disciplinary Authority after personal hearing of the workman's defence representative dismissed him unmindfully. His appeal as per representation dt. 28.5.94 to the Zonal Manager, the Appellate Authority was accordingly rejected just as his appeal made on 29.10.94 before the Chairman and Managing Director, Bank of India, H.Q. Bombay against the order of the Appellate Authority was disposed of at the level of the Zonal Manager which was communicated on 01.2.95. The workman was victimised not only by the unfair and illegal domestic proceeding, but also by the illegal dismissal order of the management both against the principle of natural justice. The Industrial Dispute though pursued by the Association yet no result, then raised by the workman before the ALC. (Central) Patna for amicable settlement, on the failure of which, its reference came for adjudication.

3. The workman in his specific denialful rejoinder has stated that an authentication of entry of the amount deposited and duly entered on the pass book speaks no lie on part of the workman. At the denial of Pass Book holder Sri Shyam Kant Tewary customer to have over drawn Rs. 1000/-, Mr. A.K. Ghosh (witness No. 3) plannedly got a dateless complaint without his endorsement filed by him (Mr. Tewary) against him at his very initiative to show his involvement antedated by the aforesaid Branch Manager himself A.K. Ghosh, whereas he had already rectified that irregularity two months earlier, and admittedly no financial loss to the Bank. There is no finding over misappropriation. The domestic enquiry vitiates for violation of the principle of natural justice. The charges against the workman unmentioned as a misconduct. The workman mere on preponderance of probability cannot be dismissed from service which is shockingly disproportionate to it, as it presupposes its strict proof of definite charges. An appeal to the Chairman and Managing Director in case of his dismissal against the principle of natural justice is not bare.

4. Categorically contra pleaded cases of the Management is that out of 25 to 30 average vouchers

including cash ones as admitted by the workman himself, cash vouchers might be surely lesser, so that customer crowd was manageable even in the state of the alleged heavy clerical work load. On 3.9.90 after receiving Rs. 1000/- from customer Sri Shyamkant Tiwary holder of S.B. A/c. No. 12 for deposit through Pay-in-Slip, though the workman issued him it counter slip duly stamped and signed by him also entered the credit of said Amount in his Pass book yet he did not enter it in the Receipt Scroll Book and Cash Receipt Book, and he kept the money with him. On 8.9.90 Mr. Tiwary withdraw Rs. 4600/- from his account by Rs. 1000/- and on detecting alteration in the ledger A/C. No. 12 as found by the Manager, he affirmed his deposit of said amount in his account, and produced the counterfoil and Pass Book as also admitted by the workman entirely later on. The misappropriation of Rs. 1000/- by the workman surfaced, when he transferred the amount into the said Saving Bank A/C of the account holder but unauthenticated by any officer. The Branch Manager (Witness No. 3) had affirmed no alteration till the ledger checking on 7.9.90 and the original balance Rs. 3676.91 as on 3.9.90 altered as 4676.91 to accommodate the withdrawal of Rs. 4600/- on 8.9.90. Just after a fortnight on 17.9.90, the workman did not enter an amount of Rs. 19150/- deposited by Sri Badri Singh on his A/c. No. 942 in the Receipt Scroll Book and the Cash Receipt Book, though he entered it in his Savings Bank Pass Book. The workman was caught red handed for the fraudulent act, a misconduct for which he was duly proceeded through very fair domestic enquiry, and duly awarded with dismissal punishment, in view of the serious misdeeds misappropriation of customer's money and alteration of the Bank Records.

5. Further case of the Management is that the Competent Authority prior to the issuance of the chargesheet called for an explanation from the workman as per Memo dt. 21.11.90. Though the charge No. V & VI were not included in the suspension order, yet there is no bar under the law to include an additional charge in the chargesheet. The domestic enquiry was fairly conducted for the charge under clause 19.5 (j) as per the provisions of the Bipartite Settlement dt. 19.10.66. The abolition of Patna Region with the formation of new Gaya Region falls under the Administrative Jurisdiction of the Region. Till the appointment of a permanent Regional Manager of the newly formed Gaya Region, the Dy. Zonal Manager of Bihar North Zone was empowered to officiate as the Regional Manager of Gaya Region as per order dt. 19.9.1992 of the Zonal Manager, North Zone Bihar so he *ipso facto* became the Disciplinary Authority for the awardee staff of Gaya Region. Since the workman was working at Sisaura Branch previously under the jurisdiction of Patna Region but its abolition with the formation of new Region of Gaya including the said branch, the Disciplinary Authority in respect of him was then the Regional Manager of the Gaya Region; as there was no transfer of jurisdiction over the

branch from one region to another thereby there was no need for approval of the appointment of Sri Gurmit Singh as the Enquiry Officer by the new Disciplinary Authority of Gaya Region. On the change of circumstances, the order of his suspension was revoked by the Competent Authority. No preliminary enquiry report was adduced on support of the charge against the workman, so supply of its copy was not required, nor any prejudice was caused by non-supply of the list of documents witnesses in the enquiry, as he had fully participated in it. The copy of the complaint was accepted by him and his defence representative without any objection. Each of the charges relates to distinct and separate act of misconduct committed by the workman. The Enquiry Report is based on the accurate and critically appreciated finding of E.O. Likewise the awarding of dismissal punishment to him by the Disciplinary Authority was passed after careful consideration of the various material on the enquiry record as well as of the grave nature of his misconduct.

FINDING WITH REASONING

6. In this case, on due consideration of all the materials oral and documentary both as adduced by MW-1 Prasant Kumar Tripathy, the Industrial Relation Officers, B.O.I, Patna Zone as well as WW-1 Uma Shankar Ram, the workman himself at the preliminary point, this Tribunal as per order dt. 6.7.11 has held the Domestic Enquiry as fair, proper and in accordance with the principle of natural justice. Thus the case came for hearing the argument of both the parties on merits. Mr. D.K. Verma, the learned Advocate for the Management appeared on 14.7.11 and argued, but Mr. D.K. Jha, the learned Advocate for the workman appeared neither on the said date nor on the last date 15.9.11; despite giving him sufficient opportunities, Mr. Jha, Advocate for the workman could not argue; hence on the latter date, the award stood reserved for order.

7. Mr. D.K. Verma, the learned Advocate for the Management, has submitted that the defalcation charge has been clearly proved against the Workman, so his dismissal as punishment was not only just and proper in view of his misconduct of serious nature but also quite proportionate to the dismissal of the workman for it.

8. On the perusal and appreciation of all the materials in Exhibited document of the Management (Ext. M 1 to 8) and those of the workman u/s 11 A of the Industrial Dispute Act, 1947 I find the following facts as indisputable:

- (i) Workman Uma Shaker Ram as a staff-clerk-cashier at Sisaura Branch of the Management was suspended as per the Suspension Order dt. 28.12.1990 (Ext. W-1) of the Regional Manager cum Disciplinary Authority (herein after referred as RM/ DM) or for his alleged gross misconducts:—
 - (a) Not properly crediting the sum of Rs. 1,000 in the Saving Bank A/c No. 12 Holder Shyamakant

Tiwary on 3.9.1990;

- (b) Altering its balance in its ledger upon his causing for withdrawal of Rs. 4,600 on 8.9.1990.
 - (c) not entering the sum of Rs. 1,900/- in the books of the receipt scroll and cash and removing the relative vouchers from the bank records related to A/c holder Badri Singh on 17.9.1999;
 - (d) and not debiting intentionally his A/c No. 640 on 1.9.1990 against his alleged marked the ledger folio No on the withdrawal slip to show as if posted in his Account his withdrawal of Rs. 600/- from his own A/c (the workman concerned).
- (ii) The charge sheet dt. 2.11.1991 (Ext. W-3 as an enclosure to the RM/DA's letter 2.22.91 alleged total six charges against the workman, out of which the charges Nos. 1 to 3 relate: to on 3.9.1990 unentering and uncrediting Rs. 1,000/- deposited S.B. A/c No. 12 holder Sri Shamakant Tiwary in Scroll Book & Receipt Book and removal of its voucher from the records concerned.
- (2) On 8.9.1990 the alteration of the balances in the S.B. Ledger No. 1 of the aforesaid Account.
 - (3) On the same date the payment after transfer of the amount from his own A/c No. 640 to the aforesaid Holder's Account.
 - (4) Likewise concerning the sum of Rs. 1900/- of Sri Badri Singh A/c Holder No. 142 and prompt deposit of it in his A/c.
 - (5) Fifth charge as to fraudulent and false statement of the workman in respect of his motorcycle and its theft, for which neither submitting its F.I.R. nor lodging a claim with the Insurance Company.
 - (6) Sixth charge-for over withdrawing Rs. 300/- and Rs. 1200/- as per the debit notes Nos. 1593 and 3150 dt. 7.5.1990 and 10.6.1990 respectively by him from his A/c at Sisaura Br. without his sufficient balance.

All these acts are alleged to be gross misconducts under clause 19.5(j) of the First Bipartite settlement dt. 19.10.1966.

- (iii) after due enquiry into the charge, the Enquiry Officer Mr. Gurmeet Singh as per his enquiry report dt. 17.7.1993 (Ext. M-4) held the workman guilty of the aforesaid first four charges only, for which the Regional Manager, Gaya Region-cum-Disciplinary Authority as per his order dt. 10.3.1994 (Ext. M-6) awarded the workman with his consolidated punishment of dismissal without notice from his Bank's service which was also remained upheld by

the Appellate Authority concerned as per his order dt. 25.7.1994 (Ext. M-8) over appeal of the workman (Ext. M-7).

9. On going though the aforesaid materials of the records, it stands clear that the workman had admitted his negligent acts of not enterings crediting the aforesaid petty amounts in the S/B A/c of the both aforesaid Accounts Holder Mr. Shyamakant Tiwari and Badri Singh and the ledger etc. at the relevant time at the Branch concerned situated in rural area where he was alone working as Clerk and Cashier. There is no documentary proof of any financial loss to the Bank by his conduct nor of any intentional misappropriation of the said petty amounts. The workman has clearly depicted the situation he was working under pressure, so under these circumstances such negligent act on the part of the workman may be expected of any workman working in the same situation of the Bank concerned at the relevant time. For such human negligent, but not intentional, acts on the part of the workman, the management ought to have punished him with the lesser punishment such as deduction of one increment with a view to reform him in future, but his dismissal from the service which amounted to not only his financial death but also to his dependent family members' as earlier reported by the workman himself. Hence, dismissal of the workman from his service is quite unfair and disproportionate to the nature of the alleged misconduct which can not be said to be gross for his admitted negligence.

Under these circumstances, I hold that the action of the Management of Bank of India in dismissing the service of Shri U.S. Ram, Ex-Clerk-cum-Cashier w.e.f. 25.2.1994 (or 10.3.1994 as per punishment order dt. 10.3.1994) is totally unjustified and illegal in view of jurisprudence of labour legislation. Therefore, punishment order dt. 10.3.1994 or as per schedule one dt. 25.4.1994 is set aside directing the Management to reinstate him with immediate effect with the 75 (Seventy five) percent back wages and its consequential benefits till his restoration, as he has already suffered irreparable financial loss for his negligent conduct. The Management is directed to implement the order within one month from the date of receipt of the Award after its publication in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2012

का०आ० 904.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/66 ऑफ 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/01/2012 को प्राप्त हुआ था।

[सं० एल-12012/195/2004 आई०आ०(बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 10th February, 2012

S.O. 904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 the Central Government hereby publishes the Award (*Ref. No. CGIT-2/66 of 2005*) of the Central Government Industrial Tribunal/Labour Court No. 2, MUMBAI now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CENTRAL BANK OF INDIA and their workmen, which was received by the Central Government on 20.01.2012.

[No. L-12012/195/2004-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

Present

K.B. KATAKE,

Presiding Officer

REFERENCE NO. CGIT-2/66 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF CENTRAL BANK OF INDIA

The Deputy General Manager
Central Bank of India, Head Office
Chander Mukhi
Nariman Point
Mumbai 400 021.

AND

THEIR WORKMEN
Shri Ajay Shankar Chavan
54, Shamlal Sharma Chawl, Jawaharnagar
Saibaba Road, Ekta Maidan, Khar (E)
Mumbai 400 051.

APPEARANCES:

For the Employer : Mr. L.L. D'Souza,
Representative.

For the Workmen : Mr. M.S. Lal,
Advocate.

Mumbai, dated the 22nd December, 2011.

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.-L-12012/195/2004-IR (B-II), dated 21.4.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:—

"Whether Shri Ajay S. Chavan, the affected workman has put in 'continuous service' in the employment of Central Bank of India, Khar (W) Branch, Mumbai as per provisions of Section 25-B of the Industrial Disputes Act 1947? If so, whether the demand of the workman for reinstatement in service on regular/permanent basis is legal, proper and justified? If so, to what relief the concerned workman is entitled and from which date and what other directions are necessary in the Court."

2. After receipt of the reference, notices were issued to both the parties. Both parties appeared through their legal representatives. Second party workman filed his statement of claim at Ex.-7. According to the second party, he was employed by Khar Branch office of the first party Bank as casual labour in subordinate staff cadre for 113 days in the year 2000. Thereafter he was engaged for several days during the years 2001, 2002, 2003 & 2004 with intermittent breaks in service. In the year 2004 his services were discontinued by the first party without giving any reasons. According to him, the first party was engaging the second party workman on temporary basis instead of appointing him on permanent employment and thus indulged in unfair labour practice. Therefore the second party workman prays to direct the first to absorb him permanently in its employment.

3. First party Bank resisted the statement of claim of the second party workman by filing written statement at Ex.-11. According to them, the second party has falsely contended that he worked for 290 days in the year 2001. According to them, the second party was engaged as casual worker on daily wages as and when required. The first party Bank is a Nationalised Bank constituted under the provisions of the Banking Companies (Acquisition & Transfer of Undertaking) Act 1976 and appointment to any post in the Bank is governed by the statutory rules/regulations in force from time to time. Therefore according to them, second party is not entitled to any reliefs as prayed for.

4. The second party workman filed rejoinder at Ex-12 reiterating the contents in the statement of claim. Thereafter the matter was fixed for evidence of the workman. Today when the matter was called out, the second party workman filed application (Ex-42) for withdrawing the above reference as first party concurred to consider him in its services as per the Recruitment Rules. In the above circumstances, I think it proper to dispose of this reference for want of prosecution. Hence the order:

ORDER

Reference is dismissed for want of prosecution with no order as to cost.

K.B. KATAKE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2012

का०आ०. 905.—औद्योगिक विवाद अधिनियम 1947 (1947

का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/186/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 16-01-2012 को प्राप्त हुआ था।

[सं० एल-12012/270/1994-आई आर (बी०, II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 10th February, 2012

S.O. 905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (**Ref. No. CGIT/NGP/186/2002**) of the **Central Government Industrial Tribunal-cum-Labour Court, Nagpur** now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of **Bank of Maharashtra** and their workman, which was received by the Central Government on **16.01.2012**.

[No. L-12012/270/1994-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/186/2002 Date: 04.01.2012

Party No. 1 : The Chief Manager,
Vidharbha Zonal Office,
Bank of Maharashtra,
Sitabuldi, Nagpur-10

Versus

Party No. 2 : Shri Shripad S/o Shri Martandrao
Deshpande, 133, Farm Land,
Ramdaspeth, Nagpur-10. (Dead)

Substituted by legal heir, Smt. Meena W/o Late
Shripad Deshpande, 133, Farm, Land, Ramdaspeth, Nagpur-
10 (as per order date 09.10.2001).

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947), ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the

management of Bank of Maharashtra, and their workman, Shri Shripad M. Deshpande to CGIT-cum-Labour Court, Jabalpur as per letter No. L.-12012/270/1994-IR(B-II), dated 12.01.1995, with the following schedule:—

"Whether the action of the management of Bank of Maharashtra, Nagpur in dismissing Shri Shripad Martandrao Deshpande, Clerk/Typist from service w.e.f. 24.09.1993 is legal and justified? If not, what relief the said workman entitled to?"

Subsequently the reference was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Shripad M. Deshpande ("the workman" in short) filed his statement of claim and the management of the Bank of Maharashtra ("Party No.1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was an award staff employee in Bank of Maharashtra, Vidharbha Zonal Office in inspection cell, Nagpur and had put in 21 years of long unblemished service and there was not a single complaint against him during the said period and in April 1991, a charge sheet was issued against him under clause 19.5 (J) of Bipartite Settlement for doing any act prejudicial to the interest of the Bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss, on the allegation of withdrawing a sum of Rs. 47,000/- from the staff S/B A/C No. 929 of Shri P.P. Khsire, Deputy Chief Manager, Bank of Maharashtra, Vidharbha Zonal Office, Nagpur and causing loss of Rs. 47,000/- to the Bank and the Bank decided to hold a departmental enquiry against him and appointed Shri S.R. Joshi, Deputy Chief Manager as the Enquiry Officer and after the enquiry, the enquiry officer submitted his report holding the charges to have been proved against him and the after submission of the report a show cause notice was issued to him on 30.07.1993 along with the copy of the enquiry report to show cause as to why the proposed punishment of "dismissal without notice" be not imposed and to appear before the Disciplinary Authority on 06.08.1993 at 12 noon for personal hearing and he submitted his written notes of argument before the Disciplinary Authority and appeared before him on 06.09.1993 and the Disciplinary Authority gave him personal hearing and passed the order of punishment on 24.09.1993 directing his dismissal from services without notice and he preferred an appeal against the order of dismissal to the Appellate Authority but the appeal was dismissed by the Appellate Authority on 12.11.1993 mechanically, without application of mind and the findings of the enquiry officer per se erroneous and without any evidence and no fair opportunity was given to him in the enquiry.

The workman had prayed to quash and set aside the order dated 24.09.1993 and for his reinstatement in service with consequential benefits including the back wages and seniority.

3. The party no. 1 in its written statement has pleaded inter alia that the statement of claim is infact not a statement of claim, but the same is like a criminal appeal, which is beyond the scope of consideration of the Tribunal and the workman was working in Inspection department of Bank of Maharashtra, Zonal Office, Nagpur as a clerk/Typist and one Shri P.P. Kshire was working as the inspecting officer in the same office and on 10.12.1990, Shri Kshire made a complaint to the Bank about withdrawal of a sum of Rs. 47000/- on 29.11.1990 from his savings bank account no. 929 (staff AGM) Standing in Bank of Maharashtra, Sitabuldi branch, Nagpur and from the inquiry, it came to light that it was the workman, who had withdrawn the said amount of Rs. 47000/- from the account of Shri Kshire, so a charge sheet was issued against the workman and a departmental enquiry was held against him and the workman was assisted by a very competent, able and of his choice defence representative in the departmental enquiry and all possible opportunities were given to him to defend himself in the enquiry and the enquiry was fair, legal, just and proper and the principles of natural justice were followed in letter and spirit and there were 85 sittings of the departmental enquiry and the enquiry was adjourned 29 times at the request of the workman and about one year time was given to the workman to submit the second opinion of the handwriting expert, but he failed to produce the same and six witnesses were examined and 13 documents were produced by the management in the enquiry, whereas, 8 witnesses were examined by the workman in support of his defence and the workman filed written notes of arguments and taking into consideration the submissions made by the parties, the enquiry officer submitted his report and the workman submitted his reply to the second show cause notice and was also heard personally by the Disciplinary Authority, before imposition of the punishment and the appeal filed by the workman was dismissed on 12.11.1993 by the appellate authority and the findings recorded by the disciplinary authority are correct and legal and they are not per se erroneous and the order was passed with full application of mind and the order was not passed mechanically either by the disciplinary authority or the appellate authority and there is sufficient evidence against the workman in the departmental enquiry to prove the charges and except the bare allegations, there is nothing on record to demonstrate that no fair opportunity was given to the workman and the orders passed by the disciplinary authority and the appellate authority are legal and valid orders and the charges leveled against the workman were proved in a fair departmental enquiry and the findings of the enquiry officer are proper and legal and strict rules of Evidence Act are not applicable to departmental

proceedings and the workman is not entitled for any relief.

4. It is necessary to mention here that while the reference was pending before the CGIT-cum-Labour Court, Jabalpur, the workman expired and the widow of the workman, Smt. Meena S. Deshpande filed an application to substitute her in place of the deceased workman, as his legal heir and as per orders dated 09.10.2001, Smt. Meena was substituted in place of the deceased workman.

5. It is also necessary to mention here that, my predecessor-in-office had closed the reference on 07.07.2006, after hearing of argument from both the parties and posted the same for award. However, no award was passed by my predecessor-in-office till his retirement on 06.08.2010, so the reference was re-opened and notices were sent to the parties for hearing of argument. Though service of notice on the parties was sufficient, they did not appear to argue out the case. On perusal of the record, it was found that parties had filed written notes of argument. So by order dated 27.07.2011, the case was closed and posted for award.

6. At this juncture, I think it necessary to mention that as this is a case of dismissal of the workman from service, after holding of a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration by the Presiding Officer, CGIT-cum-Labour Court, Jabalpur. The order dated 08.04.1996 discloses that argument was heard on the question of the validity of the departmental enquiry. It is found that in the order dated 08.04.1996 it is mentioned that "The workman has fully participated the enquiry, after the cross-examination of witnesses, the E.O. provided the chance to examine witness and file and the matter will be decided after hearing final arguments" and the case was posted for final argument. As no definite findings have been given regarding the validity of the departmental enquiry, it is required to give the finding in respect of the same, before considering about the perversity of the findings and quantum of punishment.

7. In the written notes of argument, it was submitted on behalf of the workman that the enquiry held against the workman was not fair and proper and not in accordance with the principles of natural justice, as the enquiry officer did not allow the workman for examination of two witnesses in his defence and no reliance should have placed by the enquiry officer on the evidence of Smt. Galpat, who did not follow the procedures as prescribed, while introducing Shri Varadpande for opening of an account in the bank and so also on the evidence of the handwriting expert and the findings of the enquiry officer are perverse and the punishment is against the provisions of law and arbitrary and the same is harsh, unjust, illegal and not proper and the amount of Rs. 47000/- has already been recovered from the G.P. Fund of the workman and it is clear that the workman

was awarded two punishment for one cause of action which is not tenable in law and as such, the order of the punishment is required to be set aside and the consequential benefits be given to the legal heir of the workman.

8. Per contra, it was submitted on behalf of the party no. 1 that it has already been held by order dated 08.04.1996 that the enquiry held against the workman was proper, just and legal and a charge sheet against the workman under clause 19.5 (j) of Bi-partite settlement for doing an act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss and charges leveled against the workman were proved in the departmental enquiry and the workman was given all reasonable opportunities to defend himself in the departmental enquiry and it is not within the jurisdiction of the Tribunal to decide for itself, whether the charges framed against the workman had been established and the authority in holding was justified that the charges against the employee were well founded and the evidence produced in the enquiry proves that the bank was justified in coming to the conclusion that the workman is guilty of the misconduct charged and the Tribunal cannot go in to the sufficiency of the evidence and the findings are not perverse and the punishment is not shockingly disproportionate to the charges, which have been proved in a properly held departmental enquiry.

In support of such contentions, reliance was placed on the decisions reported in AIR 1963 SC-601 (Union Territory of Tripura Vs. Gopal), AIR 1960 SC-191 (Management of Balipara Tea Estate Vs. Its Workman), AIR 1963 SC-1723 (State of A.P. Vs. Sri Ramarao), AIR 1994 SCC (L & S), 687 (State Bank of India Vs. Somerandra Kishore Endow) and many others.

9. It is already mentioned earlier that as no definite finding regarding the validity of the departmental enquiry was given, it is necessary to give such a findings.

Perused the record including the documents of the departmental enquiry. A charge sheet containing the details of the charges leveled against the workman was served on him. The workman was represented by a defence representative in the enquiry. The witnesses for the management were examined in presence of the workman and they were cross-examined by the defence representative. The workman examined eight witnesses in his defence. Written notes of argument was also filed by the workman. After submission of the enquiry report, the second show cause notice was issued to the workman along with the copy of the enquiry report and the workman submitted his show cause and he was also heard personally by the disciplinary authority, before imposition of the punishment. It is also found that the enquiry officer rightly rejected the request of the workman for examination of the two witnesses. The workman took several adjournments to produce a second handwriting expert's report, but did

not produce such report. So taking all the materials on record into consideration, it is found that the departmental enquiry held against the workman was valid, just and proper and was in accordance with the principles of natural justice.

10. It is well settled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. Neither the technical rules or Evidence Act nor proof of fact or evidence as defined there in, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence or if the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of the case.

The present case in hand is now to be considered with the touch stone of the principles as mentioned above.

On perusal of the record, it is found that the findings of the enquiry officer are very much in tune with the record of the enquiry, oral and documentary evidence and all other relevant factors and the findings are proper and well reasoned and based on the evidence on record and are not perverse.

So far the punishment is concerned, the same is not shockingly disproportionate. Gross misconduct has been proved against the workman in a properly held departmental enquiry. The Bank management lost confidence on the workman and he came to be dismissed after taking into consideration all the aggravating and extenuating circumstances of the case. Therefore, the workman was not entitled to any relief. Hence it is ordered:

ORDER

The action of the management of Bank of Maharashtra, Nagpur in dismissing Shri Shripad Martandrao Deshpande, Clerk/Typist from service *w.e.f.* 24.09.1993 is legal and justified. Neither the deceased workman nor his legal heir, Smt. Meena is entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 10 फरवरी, 2012

का०आ०. 906.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय न० 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/57 ऑफ 2008), को प्रकाशित करती है जो केन्द्रीय सरकार को 20.1.2012 को प्राप्त हुआ था।

[सं० एल०-12012/43/2008-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 10th February, 2012

S.O.. 906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (*Ref. No. CGIT-2/57 of 2008*) of the **Central Government Industrial Tribunal/Labour Court No. 2, MUMBAI** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **BANK OF MAHARASHTRA** and their workmen, which was received by the Central Government on **20.01.2012**.

[No. L-12012/43/2008-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

Present

K.B. KATAKE
Presiding Officer

REFERENCE NO. CGIT-2/57 OF 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BANK OF MAHARASHTRA

The Deputy General Manager
Bank of Maharashtra
Mumbai City Regional Office
Fort
Mumbai-400 023.

AND

THEIR WORKMEN.
Shri Santosh S. Mhaskar
Janata Nagar Grih Nirman Society
"B" Wing, Room No. 414
Tardeo
Mumbai-400 034.

APPEARANCES:

FOR The Employer: Mr. M. B. Anchan,
Advocate.

FOR THE UNION : Mr. J.H. Sawant,
Advocate.

Mumbai, dated the 16th December 2011.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/43/2008-IR (B-II), dated 08.09.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Bank of Maharashtra, Regional Office, Mumbai by terminating the services of Shri Santosh S. Mhaskar is justified? What relief the workman Shri Santosh S. Mhaskar is entitled to?"

2. After receipt of the reference, both the parties were served with notice of the reference. The second party workman appeared through his legal representative and filed his Statement of Claim at Ex-5. First party resisted the statement of claim of second party by filing their written statement at Ex-7. Issues were framed by my Dd. Predecessors at Ex-9 and the matter was fixed for evidence of second party.

3. Meanwhile on the request of the both parties, matter was kept in the Lokadalat. Advocate for the second party workman by his purshis Ex-12 prayed to dispose of this reference as the workman has expired and first party has agreed to pay the legal dues to the L/Rs of the second party workman. Accordingly, *vide* Ex-11, matter was placed before this Tribunal for orders. Hence the order.

ORDER

Vide Ex-11 & 12, the dispute is settled in Lokadalat dated 16/12/2011. Hence reference stands disposed of

K.B. KATAKE, Presiding Officer

Ex-11

PROCEEDINGS BEFORE THE LOK ADALAT HELD ON
16TH DECEMBER 2011

Panel Members:—

1. Mr. R.S. Pai, Adv.
2. Ms. Sejal Kulkarni, Adv.
3. Mr. G.M. Thomas, Adv.

Reference No.CGIT-2/57 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT
OF BANK OF MAHARASHTRA

AND

THEIR WORKMEN

Present:

For the Management: Mr. M.B. Anchan, Adv.
For the Workman: Mr. J.H. Sawant, Adv.

Advocate Mr. Sawant for the second party files application for disposing of the reference vide application dated 16/12/2011 as the second party has expired and they agreed to make the payments of legal dues to the widow of the deceased workman. In view of the above this reference has been settled out of court.

Sd/- (Jaiprakash Sawant) Adv. for Second party	Sd/- (M.B. Anchan) Adv. for the first party
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Sd/- (Adv. R.S. Pai)	Sd/- (Adv. Sejal Kulkarni)
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Seen	Sd/- (Adv. G.M. Thomas)
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Sd/- (K.B. Katake) PO, CGIT-2, Mumbai,
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Ex-12
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.2, MUMBAI

Ref. No. CGIT-2/57 of 2008

Bank of Maharashtra

First Party

V/s.

Their workmen (Shri Santosh S. Mhaskar)

Second Party

Application for disposal of the Reference proceedings

MAY IT PLEASE YOUR HONOUR

The second party workman expired. The first party has agreed to make payment of legal dues to the widow of the deceased second party workman.

It is therefore prayed as per the instructions from the union representative, Shri Umakant Kotnis that the reference be disposed of for want of prosecution.

Mumbai

Date: 16.12.2011

Sd/-
 (Jaiprakash Sawant)
 Adv. for Second party

Nasik
 Maharashtra-422 007.

AND

No objection

Sd/-
 (M.B. Anchan)
 Adv. for the first party

Seen

Sd/-
 (K.B. Katake)
 PO, CGIT-2, Mumbai.

नई दिल्ली, 10 फरवरी, 2012

का०आ०. 907.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/22 ऑफ 2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.1.2012 को प्राप्त हुआ था।

[सं० एल०-12012/1/2008-आई आर (बी-II)]
 शीश राम, अनुभाग अधिकारी

New Delhi, the 10th February, 2012

S.O. 807.—In pursuance of Section 17 of the Industrial disputes Act, 1947, the Central Government hereby publishes the Award (*Ref. No. CGIT-2/57 of 2008*) of the Central Government Industrial Tribunal/Labour Court No. 2, **MUMBAI** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **CENTRAL BANK OF INDIA** and their workmen, which was received by the Central Government on **16/01/2012**.

[No. L-12012/1/2008-IR (B-II)]
 SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

Present
 K.B. KATAKE
Presiding Officer

REFERENCE NO CGIT-2/22 OF 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF CENTRAL BANK OF INDIA

The Regional Manager
 Central Bank of India
 Regional Office
 P-63, MIDC,
 Satpur

THEIR WORKMEN.

Shri Narendra Manohar Chitte
 At Post Malpur
 Tal. Sindkheda
 Distt. Dhule
 Maharashtra.

APPEARANCES:

FOR THE EMPLOYER: Mr. L.L. D'Souza,
 Representative.

FOR THE WORKMAN: Mr. Gurunath Naik,
 Advocate.

Mumbai, dated the 21st November, 2011.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/1/2008-IR (B-II), dated 17.03.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Central Bank of India in not absorbing Shri Narendra Chitte Casual Labour as full time sub-staff is legal and justified? If not, what relief the concerned workman is entitled?"

2. After receipt of the reference from the Ministry, both the parties were served with notices. In response to the notice, the second party workman has filed his statement of claim at Ex-3 wherein he has prayed to direct the first party to reinstate the workman with full backwages and continuity of service w.e.f. 28/02/2004 alongwith all consequential benefits.

3. The first party management resisted the statement of claim *vide* their written statement at Ex-6. They have denied all averments and contentions in the statement of claim of the second party. Thereafter workman filed his rejoinder at Ex-12. My Id. Predecessor framed issues at Ex-9. Second party workman filed his affidavit in lieu of examination-in chief EX-12. After closing of evidence of second party, the matter was fixed for evidence of the first party.

4. Meanwhile second party workman filed application to take the matter on today's board for withdrawing the reference as settled out of court. He prays that the reference be disposed of as settled.

3. As the second party workman has filed withdrawal

application, no industrial dispute remains to be adjudicated. Thus I dispose of the reference as prayed by the second party in his application Ex-15. Thus the order:

ORDER

- (i) The reference is disposed of as withdrawn.
- (ii) No order as to costs.

K.B. KATAKE, Presiding Officer/Judge
नई दिल्ली, 10 फरवरी, 2012

कांग्रेस 908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओमन एयर एवं के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई नं-1 के पंचाट (संदर्भ संख्या 33/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2012 को प्राप्त हुआ था।

[सं. एल-11012/35/2005 आई आर (सी-1)]
डॉ॰एस॰एस॰ श्रीनिवास राव, डेस्क अधिकारी

New Delhi, the 10th February, 2012

S.O. 908.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (*Ref. No. 33/2005*) of the **Central Government Industrial Tribunal-cum-Labour Court-1, MUMBAI**, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of **M/s. OMAN AIR**, and their workman, which was received by the Central Government on 10/02/2012.

[No. L-11012/35/2005-IR(C-I)]
D.S.S. SRINIVASA RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

JUSTICE G.S. SARRAF

Presiding Officer

REFERENCE NO. CGIT-1/33 OF 2005

Parties:

Employers in relation to the management of Oman Air

And

Their Workman (I.A. Shaikh)

APPEARANCES:

For the management : Shri Ashwin Modi, Adv.

For the workman : Shri M.B. Anchan, Adv.

Maharashtra

Mumbai dated the 27th day of January, 2012.

AWARD

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The terms of reference given in the schedule are as follows:

"Whether the action of the management of M/s. Oman Air Mumbai in terminating the services of Sh. Intekhab Alam Shaikh *vide* letter dt. 1.9.2004 is just, fair and legal? If not, to what relief is the workman entitled?"

2. According to the statement of claim submitted by the workman he was appointed as a office boy by Oman Air, Mumbai *w.e.f.* 19.10.1999. He was confirmed on the said post by letter dt. 18.4.2000. He continuously worked on the same post without any break of service till his termination *w.e.f.* 26.8.2004 *vide* letter dt. 1.9.2004 According to the statement of claim on 28.7.2004 the DRI Officers took him to their office at Colaba and he remained in their custody on that day. Next day he was taken to the Court of Additional Chief Metropolitan Magistrate and the Court remanded him to custody for 3 days. After his release on 2.8.2004 he reported for duty. He was allowed to resume his duty and he worked for about 16 days. On 18.8.2004 he was placed under suspension and his airport pass was taken away by the Airport Manager. By letter dt. 1.9.2004 his services were terminated *w.e.f.* 26.8.2004. According to the statement of claim the management did not issue any charge sheet nor held any departmental enquiry. No show cause notice was issued to him before terminating his services. Termination of his services without enquiry and without show cause notice is against the principles of natural justice and therefore, illegal. He was retrenched from service and while retrenching he was not given one month's notice or one month's wages in lieu of such notice. He was also not paid retrenchment compensation. His retrenchment is, therefore, contrary to Section 25-F of the Act. He is, therefore, entitled to reinstatement in service with full back wages and continuity of service.

According to the written statement submitted by the first party company the workman was employed on compassionate ground on demise of his father who was working as office boy in the company. The workman was arrested by the office of the DRI, Mumbai on 28/29/7/2004 and he was remanded to their custody. The workman reported for duty on 2.8.2004 without Informing the company the cause of his absence and worked for about two weeks. A letter dt. 12/13/8/2004 was received from the DRI, Mumbai wherein it was stated that foreign currency equivalent to Rs. 17,98,900/- was seized from one Iqbal Yusuf Suleman and in the course of investigation the workman admitted that on 5 to 6 occasions he had helped Iqbal Yusuf Suleman by collecting packets containing foreign currency from Iqbal Yusuf Suleman outside the

airport and handed over the same to him after he had completed customs and security checks. The first party company was shocked to learn about this illegal and anti-national activity of the workman. The first party company is operating in India on bilateral relations between India and Sultanate of Oman and it cannot have a person with criminal bent of mind with them as it adversely affects not only its business interest but also its very existence in India. The first party company could not continue with the workman who was labelled a security risk, As the PIC No. N 00021961 issued to the workman was cancelled the first party company had no option but to terminate the services of the workman. It has, therefore been prayed that the claim made by the workman be dismissed.

4. The workman has filed his affidavit and he has been cross-examined by learned counsel for the first party company. The first party company has not examined any witness.

5. Heard Shri Ashwin Modi, learned counsel for the first party and Shri Anchan, learned counsel for the second party workman.

6. It is not disputed by learned counsel for the workman that chargesheet has been filed against the workman and the case is pending in Court.

7. Generally, an enquiry is held before imposition of punishment but if any workman is involved in an activity such as smuggling of foreign currency or aiding or being concerned in anyway in the smuggling and a penal action is brought against the workman by the appropriate authority under law then it may not be necessary to hold an enquiry in the matter before imposition of any punishment. In my opinion in such matters the Competent Authority can accept the findings of the statutory authority regarding the involvement of the workman and there is no need to make any fresh enquiry. In this matter the workman has been found to be involved in foreign currency smuggling and a chargesheet has been filed against him, therefore, in my opinion no second enquiry is necessary. If the workman is finally acquitted by a competent court then he is free to seek appropriate relief before appropriate forum.

8. There is no retrenchment of the workman in this case and, therefore, there is no question of giving retrenchment benefits to him.

9. For the reasons stated above the workman is not entitled to any relief.

An award is made accordingly.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली 17 फरवरी, 2012

का०आ० 909.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का.आ. दिनांक 18.08.2011 द्वारा तथा खनन उद्योग जोकि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 13 में शामिल है को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 25.08.2011 के छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की ओर कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 25.02.2012 से छः माह की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/11/97 आई आर (पी एल)]

चन्द्र प्रकाश, संयुक्त सचिव

New Delhi, the 17th February, 2012

S.O. 909.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour & Employment dated 18.08.2011 the service in the **Copper Mining Industry** which is covered by item 13. of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 25th August, 2011.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a **public Utility Service** for the purposes of the said Act, for a period of **six months from the 25th February 2012**.

[No. S. 11017/11/97-IR (PL)]
CHANDRA PRAKASH, Jt. Sec.